

MONTANA

MONT. CODE

Title 45. Crimes

Chapter 6. Offenses Against Property

Part 3. Theft and Related Offenses

45-6-326. Obscuring the identity of a machine.

(1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

Chapter 8. Offenses Against Public Order

Part 3. Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-305 and 45-8-307 must be interpreted and construed to effectuate their general purpose to make uniform the law of those states that enact them.

45-8-302. Definitions. In 45-8-303 through 45-8-305 and 45-8-307, the following definitions apply:

(1) "Crime of violence" means any of the following crimes or an attempt to commit any of the crimes: any forcible felony, robbery, burglary, and criminal trespass.

(2) "Machine gun" means a firearm designed to discharge more than one shot by a single function of the trigger.

(3) "Person" includes a firm, partnership, association, or corporation.

45-8-304. Possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years.

45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun must be presumed to be for an offensive or aggressive purpose when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions.

45-8-307. Exceptions. Sections 45-8-301 through 45-8-305 and this section do not prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision of the United States or transportation required for that purpose;

(2) the possession of a machine gun for a scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun for a purpose manifestly not aggressive or offensive.

45-8-313. Unlawful possession of firearm by convicted person.

(1) A person commits the offense of unlawful possession of a firearm by a convicted person if the person purposely or knowingly purchases or possesses a firearm after the person has been convicted of:

(a) a felony for which the person received an additional sentence under 46-18-221; or

(b) an offense under the law of another state or of the United States that is equivalent to an offense that when committed in Montana is subject to an additional sentence under 46-18-221.

(2) A person convicted of unlawful possession of a firearm by a convicted person shall be imprisoned in a state prison for not less than 2 years or more than 10 years.

(3) A person who has been issued a permit under 45-8-314 may not be convicted of a violation of this section.

45-8-314. Lifetime firearms supervision of certain convicted persons.

(1) For the purposes of rehabilitation and public protection, a person convicted of an offense referred to in 45-8-313 shall, as part of the sentence imposed, be sentenced to life supervision by the state for the purpose of restricting the person's right to purchase and possess firearms. Active supervision by a probation or parole officer is not required but may be imposed by the court. "Supervision" means that the person may not violate 45-8-313 and must comply with other state and federal law restrictions on the purchase and possession of firearms.

(2)(a) A person subject to subsection (1) may apply to the district court for the county in which the person resides for a permit to purchase and possess one or more firearms. The person shall show good cause for the possession of each firearm sought to be purchased and possessed. The grant or denial of the application does not prevent the person from making another application, except that if an application is denied, another application may not be made for the next 12 months.

(b) The application must contain the following information:

(i) the person's full name and any past or present aliases;

(ii) the person's date and place of birth;

(iii) the person's address;

(iv) the person's occupation;

(v) the make and model of each firearm sought to be purchased and possessed;

(vi) the date and place of each conviction of an offense referred to in 45-8-313, the name of the offense, the state and county in which the offense occurred, the sentence imposed, the place or places of incarceration, and the date of discharge from supervision for the last offense;

(vii) the name and business address of the person's last probation or parole officer; and

(viii) any other information considered necessary by the court.

(c) The person shall, at the time of filing the application with the court, mail a copy to the county attorney and county sheriff.

(d) The county attorney or county sheriff may file a written objection with the court. If no objection is filed, the court may grant the permit if it finds that the person has shown good cause to purchase and possess the firearm or firearms listed in the application. If an objection is filed, a hearing must be held within 60 days after the filing of the objection. If the court first finds that the person has shown good cause to purchase and possess the firearm or firearms listed in the application and that, but for the objection, the court would have granted a permit, the court shall decide whether the objection is valid and overrides the good cause showing and requires denial of the permit.

45-8-315. Definition. "Concealed weapon" means any weapon mentioned in 45-8-316 through 45-8-318 and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon.

45-8-316. Carrying concealed weapons.

(1) Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding \$500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding \$1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.

45-8-317. Exceptions.

(1) Section 45-8-316 does not apply to: ...

(g) a person issued a permit under 45-8-321 or a person with a permit recognized under 45-8-329; ...

(i) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

(j) the carrying of arms on one's own premises or at one's home or place of business.

45-8-321. Permit to carry concealed weapon.

(1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issu-

ance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months.

45-8-325. Permittee change of county of residence - notification to sheriffs and chief of police. A person with a permit to carry a concealed weapon who changes his county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of his change of residence and that he holds the permit. If his residence changes either from or to a city or town with a police force, he shall also inform the chief of police in each of those cities or towns that has a police force.

45-8-330. (Temporary) Exemption of concealed weapon permittee from federal handgun purchase background check and waiting period. A person possessing a concealed weapon permit is:

(1) considered to have a permit constituting completion of the background check required by 18 U.S.C. 921 through 925A; and

(2) exempt from that act's 5-day waiting period for the purchase of a handgun. (*Subsections (1) and (2) terminate on the elimination of federal statutory or case law requirements - sec. 5, Ch. 408, L. 1995.*)

45-8-332. Definitions.

(1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in rules adopted by the department of justice pursuant to 50-3-102(3).

45-8-333. Reckless or malicious use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a misdemeanor.

45-8-334. Possession of a destructive device.

(1) A person who, with the purpose to commit a felony, has in his possession any destructive

device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than \$50,000, or both.

45-8-336. Possession of a silencer.

(1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or a fine of not less than \$1,000 or more than \$20,000 or by both such fine and imprisonment.

45-8-337. Possession of unregistered silencer or of bomb or similar device prima facie evidence of unlawful purpose. Possession of a silencer that is not registered under federal law or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

45-8-340. Sawed-off firearm - penalty.

(1) A person commits the offense of possession of a sawed-off firearm if he knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) by a peace officer of this state or one of its political subdivisions;

(b) by an officer of the United States government authorized to carry weapons;

(c) by a person in actual service as a national guardsman;

(d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);

(e) for educational or scientific purposes in which the firearms are incapable of being fired;

(f) by a person who has a valid federal tax stamp for the firearm, issued by the bureau of alcohol, tobacco, and firearms; or

(g) by a bona fide collector of firearms if the firearm is a muzzleloading, sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm must be fined not less than \$200 or more than \$500 or imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, he must be fined an amount not to exceed \$1,000 or imprisoned in

the state prison for a term not to exceed 5 years, or both.

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

45-8-344. Use of firearms by children under fourteen prohibited - exceptions. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor or an adult who has been authorized by the parent or guardian.

45-8-345. Criminal liability of parent or guardian - prosecution.

(1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

45-8-351. Restriction on local government regulation of firearms.

(1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2)(a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

45-8-360. Establishment of individual license. In consideration that the right to keep and bear arms is protected and reserved to the

people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act.

45-8-361. Possession or allowing possession of weapon in school building – exceptions - penalties - seizure and forfeiture or return authorized - definitions.

(1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3)(a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4)(a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider

alternatives to incarceration that are available in the community.

(b)(i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nunchucks, or brass or other metal knuckles. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

Part 4. Montana Street Terrorism Enforcement and Prevention Act

45-8-406. Supplying of firearms to criminal street gang.

(1) A person commits the offense of supplying firearms to a criminal street gang if the person purposely or knowingly supplies, sells, or gives

possession or control of any firearm to another, and the person has actual knowledge that the other person will use the firearm to commit an offense enumerated in 45-8-405 while actively participating in any criminal street gang whose members engage in a pattern of criminal street gang activity.

(2) Subsection (1) does not apply to a person who is convicted as a principal to the offense committed by the person to whom the firearm was supplied, sold, or given.

(3) A person convicted of the offense of supplying firearms to a criminal street gang shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

Title 46. Criminal Procedure

Chapter 9. Bail

46-9-108. Conditions upon defendant's release - notice to victim of stalker's release.

(1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions: ...

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon; ...

[Current through 2003 Regular Session (no 2004 Session)]

**NEBRASKA
NEB. REV. STAT.**

Chapter 28. Crimes and Punishment

Article 12. Offenses Against Public Health and Safety

28-1201. Terms, defined. For purposes of sections 28-1201 to 28-1212, unless the context otherwise requires:

(1) Firearm shall mean any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice shall mean any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Juvenile shall mean any person under the age of eighteen years; ...

(6) Machine gun shall mean any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(7) Short rifle shall mean a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(8) Short shotgun shall mean a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

28-1202. Carrying concealed weapon; penalty; affirmative defense.

(1) Except as provided in subsection (2) of this section, any person who carries a weapon or weapons concealed on or about his or her person such as a revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other deadly weapon

commits the offense of carrying a concealed weapon.

(2) It shall be an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

28-1203. Transportation or possession of machine guns, short rifles, or short shotguns; penalty; exception.

(1) Any person or persons who shall transport or possess any machine gun, short rifle, or short shotgun commits a Class IV felony.

(2) The provisions of this section shall not be held to prohibit any act by peace officers, members of the United States armed services, or members of the National Guard of this state, in the lawful discharge of their duties, or persons qualified under the provisions of federal law relating to the short rifle, short shotgun, or machine gun.

28-1204. Unlawful possession of a revolver; exceptions; penalty.

(1) Any person under the age of eighteen years who possesses a pistol, revolver, or any other form of short-barreled hand firearm commits the offense of unlawful possession of a revolver.

(2) The provisions of this section shall not apply to the issuance of such firearms to members

of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of pistols, revolvers, or any other form of short-barreled firearms for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a revolver is a Class III misdemeanor.

28-1204.01. Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.

(1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section shall not apply to the transfer of a firearm other than the types specified in section 28-1204 to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section shall apply to the transfer of any firearm described in section 28-1204, except as specifically provided in subsection (2) of section 28-1204.