

**MAINE**  
**ME. REV. STAT.**

**Title 15. Court Procedure - Criminal**

**Chapter 15. Possession of Firearms by Felons**

**§ 393. Possession of firearms prohibited for certain persons**

**1. POSSESSION PROHIBITED.** A person may not own, possess or have under that person's control a firearm, unless that person has obtained a permit under this section, if that person:

**A.** Deleted. Laws 2001, c. 549, § 2.

**A-1.** Has been convicted of committing or found not criminally responsible by reason of insanity of committing:

**1)** A crime in this State that is punishable by imprisonment for a term of one year or more;

**2)** A crime under the laws of the United States that is punishable

by imprisonment for a term exceeding one year;

**3)** A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;

**4)** A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, does not come within subparagraph (3) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment for one year or more; or

**5)** A crime under the laws of the United States, this State or any other state or the Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the prosecuting authority was required to plead and prove that the person committed the crime with the use of:

**a)** A firearm against a person; or

**b)** Any other dangerous weapon;

**B.** Deleted. Laws 2001, c. 549, § 2.

**C.** Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction:

**1)** Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another person was threatened or resulted; or

**2)** Deleted. Laws 2001, c. 549, § 2.

**3)** Under paragraph A-1, subparagraph (5);

**D.** Is subject to an order of a court of the United States or a state territory, commonwealth or tribe that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18 United States Code, Section 921(a), of that person or a child of the intimate partner of that person, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or the child, except that this paragraph applies only to a court order that was issued after a hearing for which that person

received actual notice and at which that person had the opportunity to participate and that:

**1)** Includes a finding that the person represents a credible threat to the physical safety of an intimate partner or a child; or

**2)** By its terms, explicitly prohibits the use, attempted use or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury; or

**E. Has been:**

**1)** Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a likelihood of serious harm, as defined under Title 34-B, section 3801, subsection 4, paragraphs A to C;

**2)** Found not criminally responsible by reason of insanity with respect to a criminal charge; or

**3)** Found not competent to stand trial with respect to a criminal charge.

For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

**1-A. LIMITED PROHIBITION FOR NONVIOLENT JUVENILE OFFENSES.** A person who has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under subsection 1, paragraph A-1 but is not an adjudication under subsection 1, paragraph C may not own or have in that person's possession or control a firearm for a period of 3 years following completion of any disposition imposed or until that person reaches 18 years of age, whichever is later.

**2. APPLICATION AFTER 5 YEARS.** A person subject to the provisions of subsection 1, paragraph A-1 or C as a result of a conviction or adjudication may, after the expiration of 5 years from the date that the person is finally discharged from the sentences imposed as a result of the conviction or adjudication, apply to the commissioner for a permit to carry a firearm subject to Subsection 4. That person may not be issued a permit to carry a concealed firearm pursuant to Title 25, chapter 252. A permit issued pursuant to this subsection is valid for 4 years from the date of issue unless sooner revoked for cause by the commissioner. For purposes of this subsection, "firearm" does not include a firearm defined under 18 United States Code, Section 921(3).

**3. CONTENTS.** An application under subsection 2 must be on a form prepared by the

Commissioner of Public Safety. The application must include the following: the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make, model and serial number of the firearm sought to be possessed; date, place and nature of conviction; sentence imposed; place of incarceration; name and address of probation or parole officer; date of discharge or release from prison or jail or termination of probation, supervised release for sex offenders, parole or administrative release; the reason for the request; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the indictment, information or complaint, judgment and commitment and discharge that are the subject of the conviction.

**4. NOTIFICATION, OBJECTION AND DECISION.** Upon receipt of an application, the commissioner shall determine if it is in proper form. If the application is proper, the commissioner shall within 30 days notify in writing the sentencing or presiding judge, the Attorney General, the district attorney for the county where the applicant resides, the district attorney for the county where the conviction occurred, the law enforcement agency that investigated the crime, the chief of police and sheriff in the municipality and county where the crime occurred and the chief of police and sheriff in the municipality where the applicant resides as of the filing of the application. The commissioner may direct any appropriate investigation to be carried out. If, within 30 days of the sending of notice, any person so notified objects in writing to the issuance of a permit, a permit may not be issued. The commissioner may deny an application even if no objection is filed.

**4-A. APPLICATION FOR RELIEF.** Except as otherwise provided, a person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective or committed to any psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B, section 3864 may, after the expiration of 5 years from the date of final discharge from commitment, apply to the commissioner for relief from the disability.

Relief is not available under this subsection for a person found not criminally responsible by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged by a Probate Court to lack the capacity to contract or manage the person's own affairs.

**A.** An application under this subsection must be on a form developed by the commissioner. The application must include the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make and model of the firearm sought to be possessed; reason for the request; date, place and docket number of commitment; name of institution to which

applicant was committed; names of providers that provided mental health treatment for the applicant; date of discharge from commitment; release for all mental health records; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the commitment from which the applicant seeks relief and the report of an independent psychologist or psychiatrist licensed to practice in this State specifically addressing the factors set forth in paragraph E. The commissioner may establish a roster of psychologists and psychiatrists qualified and interested in doing these evaluations. The psychologist or psychiatrist must be available for cross-examination. The psychologist or psychiatrist listed on the roster is an employee for the purposes of the Maine Tort Claims Act for evaluations under this paragraph.

**B.** The commissioner has the independent authority to establish the following, to be paid by the applicant:

- 1) Application fee; and
- 2) Fees for evaluations required by paragraph A.

**C.** Upon receipt of a completed application, the commissioner shall notify persons who received notice of the commitment pursuant to Title 34-B, section 3864, subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police and sheriff in the municipality and county where the applicant resides of the filing of the application, with a request to provide to the commissioner any information relevant to the factors in paragraph E.

**D.** Upon receipt of a completed application, the commissioner shall review the application and determine whether the person has made a prima facie showing of the elements of paragraph E. If the commissioner determines that the person has made a prima facie showing, the commissioner shall schedule a hearing.

**E.** The burden of proof is on the applicant to prove, by clear and convincing evidence, that the circumstances that led to the involuntary commitment to a hospital have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest.

**F.** If the commissioner finds by clear and convincing evidence that the circumstances that led to the involuntary commitment have changed, that the applicant is not likely to act in a manner dangerous to public safety and that granting the application for relief will not be contrary to the public interest, the commissioner may grant relief.

**G.** Notwithstanding any other provision of law, and except as indicated in this paragraph, all applications for relief pursuant to this subsection and documents made a part of the application, refusals and any information of record collected by the commissioner during the process of determining whether an applicant qualifies for relief are confidential and may not be made available for public inspection or copying unless:

- 1) The applicant waives this confidentiality in writing or on the record of any hearing; or
- 2) A court of record so orders. Proceedings relating to the grant or denial of relief are not public proceedings under Title 1, chapter 13.

The commissioner shall make a permanent record, in the form of a summary, of the final decision regarding each application. The summary must include the name of the applicant and indicate whether the application for relief was granted or denied. The information contained in this summary is available for public inspection.

**H.** An applicant may appeal the denial of an application for relief under this subsection within 30 days of receipt of the written notice of decision by filing a complaint in the District Court for de novo review in the district where the Department of Public Safety has its principal office. Hearings are closed unless otherwise agreed to by the applicant. A party aggrieved by a decision of the District Court may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

**5. APPEAL.** Any person to whom a permit under subsection 2 has been denied may file a petition for review pursuant to Title 5, chapter 375, subchapter 7.

**6. FILING FEE.** The commissioner may establish a reasonable filing fee not to exceed \$ 25 to defray costs of processing applications.

**7. DEFINITIONS.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A.** "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

**B.** "Not criminally responsible by reason of insanity" has the same meaning as used in section 103 and any comparable finding under the laws of the **United States or any other state.**

**C.** "State" means the State of Maine and "state" means any other state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico and the possessions of the United States.

**D.** "Use of a dangerous weapon" has the same meaning as in Title 17-A, section 2, subsection 9, paragraph A.

**E.** "Commissioner" means the Commissioner of Public Safety or the commissioner's designee.

**8. PENALTY.** A violation of subsection 1, paragraph A-1 or C is a Class C crime. A violation of subsection 1, paragraph D or E is a Class D crime. A violation of subsection 1-A by a person at least 18 years of age is a Class C crime.

**9. PRIMA FACIE EVIDENCE.** Notwithstanding any other law or rule of evidence, a copy of a court abstract provided by a court to the Department of Public Safety, State Bureau of Identification pursuant to Title 34-B, section 3864, subsection 12, if certified by the custodian of the records of that bureau, or the custodian's designee, is admissible in a criminal prosecution brought pursuant to this section as prima facie evidence that the person identified in the abstract has been involuntarily committed by the court issuing the abstract and has been provided the notice required in Title 34-B, section 3864, subsection 5, paragraph A-1 and Title 34-B, section 3864, subsection 13.

**10. SUBPOENA POWER.** The commissioner is authorized to issue a subpoena in the name of the commissioner in accordance with Title 5, section 9060, except that this authority applies to any stage of an investigation under this

section and is not limited to an adjudicatory hearing. If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on that witness an order requiring the witness to appear before the Superior Court to show cause why the witness should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant the court in doing so, punish that witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.

**11. RULES.** The commissioner may adopt rules to implement the provisions of subsections 2 to 4-A. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

## Chapter 17. Miscellaneous Provisions

### 455. Record of sales of firearms

**1. FORMS.** A dealer may not:

**A.** Sell, let or loan a firearm to a person without making a copy of the form a dealer must keep as prescribed by 18 United States Code, Section 923. The copy must be made and marked as 'STATE COPY' before the firearm is delivered; or

**B.** Refuse to show or refuse to allow inspection of a copy of the form described in paragraph A to a sheriff, deputy sheriff, police officer, constable, game warden or prosecuting attorney.

A person who violates this subsection commits a civil violation for which a fine of \$50 may be adjudged.

**2. FALSE OR FICTITIOUS NAME.** A person may not give a false or fictitious name to a dealer. A person who violates this subsection commits a civil violation for which a fine of \$50 may be adjudged.

**3. EXCEPTION.** This section does not apply to a wholesaler who sells only to other dealers or to a manufacturer who sells only at wholesale.

### 455-A. Warning requirement upon sales of firearms

**1. POSTING OF CONSPICUOUS WARNING.** Except as provided in subsection 1-A, any commercial retail sales outlet that sells firearms shall conspicuously post at each purchase counter where firearms may be purchased the following warning in block letters not less than one inch in height:

"ENDANGERING THE WELFARE OF A CHILD IS A CRIME. IF YOU LEAVE A FIREARM AND AMMUNITION WITHIN EASY ACCESS OF A CHILD, YOU MAY BE SUBJECT TO FINE, IMPRISONMENT OR BOTH.

KEEP FIREARMS AND AMMUNITION SEPARATE.

KEEP FIREARMS AND AMMUNITION LOCKED UP.

USE TRIGGER LOCKS."

**1-A. POSTING OF WARNINGS AT GUN SHOWS.** The warning sign as described in subsection 1 must be posted at all entrances of an organized gun show.

**2. VIOLATION.** Any person who fails to post the warning in compliance with subsection 1, commits a civil violation for which a civil forfeiture of not more than \$200 may be adjudged.

## **Title 17-A. Maine Criminal Code**

### **Chapter 1. Preliminary**

**2. Definitions.** As used in this code, unless a different meaning is plainly required, the following words and variants thereof have the following meanings. ...

**9. Dangerous weapon.**

**A.** "Use of a dangerous weapon" means the use of a firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which, in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

**B.** "Armed with a dangerous weapon" means in actual possession, regardless of whether the possession is visible or concealed, of:

(1) A firearm;

(2) Any device designed as a weapon and capable of producing death or serious bodily injury; or

(3) Any other device, instrument, material or substance, whether animate or inanimate, which, in the manner it is intended to be used by the actor, is capable of producing or threatening death or serious bodily injury. For purposes of this definition, the intent may be conditional.

**C.** When used in any other context, "dangerous weapon" means a firearm or any device designed as a weapon and capable of producing death or serious bodily injury.

**D.** For purposes of this subsection, proof that a thing is presented in a covered or open manner as a dangerous weapon gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that it, in fact, is a dangerous weapon.

**12-A.** "Firearm" means any weapon, whether loaded or unloaded, which is designed to expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun or shotgun. Any weapon which can be made into a firearm by the insertion of a firing pin, or other similar thing, or by repair, is a firearm.

### **Chapter 23. Offenses Against the Family**

#### **554. Endangering the welfare of a child**

1. A person is guilty of endangering the welfare of a child if that person:

**B.** Knowingly sells, furnishes, gives away or offers to sell, furnish or give away to a child under 16 years of age any intoxicating liquor, cigarettes, tobacco, air rifles, gunpowder, smokeless powder or ammunition for firearms;

**2.** It is an affirmative defense to prosecution under this section that:

**C.** The defendant was the parent, foster parent, guardian or an adult approved by the parent, foster parent or guardian who furnished a child under 16 years of age an air rifle, gun-

powder, smokeless powder or ammunition for a firearm for use in a supervised manner.

**3.** Endangering the welfare of a child is a Class D crime, except that a violation of subsection 1, paragraph B-2 is a Class C crime.

#### **554-A. Unlawful transfer of a firearm to a minor.**

1. As used in this section, the following terms have the following meanings.

**A.** "Transfer" means to sell, furnish, give, lend, deliver or otherwise provide, with or without consideration.

**B.** "Minor" means a person under 16 years of age.

**2.** Except as provided in section 554-B, a person is guilty of unlawfully transferring a firearm to a minor if that person, who is not the parent, foster parent or guardian of the minor, knowingly transfers a firearm to a minor.

**3.** It is an affirmative defense to a prosecution under subsection 2 that:

**A.** The actor reasonably believed the person receiving the firearm had attained 16 years of age. A reasonable belief can not be based solely upon the physical appearance of the person or upon the oral representation of that person as to that person's age; or

**B.** The transfer of the firearm to the minor was approved by the parent, foster parent or guardian of the minor.

**4.** Unlawful transfer of a firearm to a minor is a Class D crime.

#### **554-B. Unlawful transfer of handgun to minor**

1. As used in this section, the following terms have the following meanings.

**A.** "Handgun" means a firearm that has a short stock and is designed to be held and fired by the use of a single hand, or any combination of parts from which a handgun can be assembled.

**B.** "Minor" means a person under 18 years of age.

**C.** "Transfer" means to sell, furnish, give, lend, deliver or otherwise provide, with or without consideration.

**2.** A person is guilty of unlawfully transferring a handgun to a minor if that person knowingly transfers a handgun to a person who the transferor knows or has reasonable cause to believe is a minor.

**3.** This section does not apply to:

**A.** A temporary transfer of a handgun to a minor:

(1) With the prior written consent of the minor's parent or guardian and that parent or guardian is not prohibited by federal, state or local law from possessing a firearm; or

(2) In the course of employment, target practice, hunting or instruction in the safe and lawful use of a handgun.

The minor may transport an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in this subparagraph is to take place and directly from the place at which such an activity took place to the transferor;

**B.** A minor who is a member of the United States Armed Forces or the National Guard who possesses or is armed with a handgun in the line of duty;

**C.** A transfer by inheritance of title to, but not possession of, a handgun to a minor; or

**D.** The transfer of a handgun to a minor when the minor takes the handgun in self-defense or in defense of another person against an intruder into the residence of the minor or a residence in which the minor is an invited guest.

**4.** The State may not permanently confiscate a handgun that is transferred to a minor in circumstances in which the transferor is not in violation of this section and if the possession of the handgun by the minor subsequently becomes unlawful because of the conduct of the minor. When that handgun is no longer required by the State for the purposes of investigation or prosecution, the handgun must be returned to the lawful owner.

**5.** The following penalties apply.

**A.** A person who violates this section commits a Class D crime, except as provided in paragraph B.

**B.** A person who violates this section and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.

### **Chapter 29. Forgery and Related Offenses**

#### **705. Criminal simulation**

1. A person is guilty of criminal simulation if:

**A.** With intent to defraud, he makes or alters any property so that it appears to have an age, rarity, quality, composition, source or authorship which it does not in fact possess; or with knowledge of its true character and with intent to defraud, he transfers or possesses property so simulated; or

**D.** With intent to defraud and to prevent identification:

(1) He alters, removes or obscures the manufacturer's serial number or any other distinguishing identification number, mark or symbol upon any automobile, snowmobile, outboard motor, motorboat, aircraft or any other vehicle or upon any machine, firearm or other object; or

(2) He possesses any such object or any such item after that number has been altered, removed or obscured.

**2.** Criminal simulation is a Class E crime.

### **Chapter 43. Weapons**

#### **1051. Possession of machine gun**

1. A person is guilty of possession of a machine gun if, without authority to do so, he knowingly possesses a machine gun.

**2.** As used in this chapter, "machine gun" means a weapon of any description, by whatever name known, loaded or unloaded, which is capable of discharging a number of projectiles in rapid succession by one manual or mechanical action on the trigger or firing mechanism.

**3.** Possession of a machine gun is a Class D crime.

**1052. Right to possess, carry or transport machine gun** Any law enforcement officer of the State of Maine, any law enforcement officer of another state or a territory of the United States, members of the Armed Forces, Maine National Guard and Maine State Guard may possess a machine gun if the possession or carrying of such weapon is in the discharge of

his official duties and has been authorized by his appointing authority.

Machine guns manufactured, acquired, transferred or possessed in accordance with the National Firearms Act, as amended, shall be exempt from this chapter.

**1053. Confiscation and seizure of machine gun** Any machine gun possessed in violation of section 1051 is declared to be contraband and is subject to forfeiture to the State. Any law enforcement officer shall have the power to seize the same with due process.

When a machine gun is seized as provided, the officer seizing the same shall immediately file with the judge before whom such warrant is returnable, a libel against the machine gun, setting forth the seizure and describing the machine gun and the place of seizure in a sufficient manner to reasonably identify it, that it was possessed in violation of law and pray for a decree of forfeiture thereof. Such judge shall fix a time for the hearing of such libel and shall issue his monition and notice of same to all persons interested, citing them to appear at the time and place appointed to show cause why such machine gun should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town and place where such machine gun was seized, 10 days at least before said libel is returnable. In addition, a true and attested copy of the libel and monition shall be served upon the person from whom said machine gun was seized and upon the owner thereof, if their whereabouts can be readily ascertained 10 days at least before said libel is returnable. In lieu of forfeiture proceedings, title to such seized machine gun may be transferred in writing to the State of Maine by the owner thereof. If title to and ownership in the machine gun is transferred to the State, a receipt for the machine gun shall be given to the former owner by the law enforcement officer who seized the machine gun.

**1054. Forfeiture of machine gun** If no claimant for a machine gun seized under the authority of section 1053 appears, the judge shall, on proof of notice, declare the same to be forfeited to the State. If any person appears and claims such machine gun, as having a right to the possession thereof at the time when the same was seized, he shall file with the judge a claim in writing stating specifically the right so claimed, the foundation thereof, the item so claimed, any exemption claimed, the time and place of the seizure and the name of the law enforcement officer who seized the machine gun, and in it declare that it was not possessed in violation of this chapter, and state his business and place of residence and sign and make oath to the same before said judge. If any person so makes claim, he shall be admitted as a party to the process, and the libel, and may hear any pertinent evidence offered by the libellant or claimant. If the judge is, upon hearing, satisfied that said machine gun was not possessed in violation of this chapter, and that claimant is entitled to the custody thereof, he shall give an order in writing, directed to the law enforcement officer having seized the same, commanding him to deliver to the claimant the machine gun to which he is so found to be entitled, within 48 hours after demand. If the judge finds the claimant not entitled to possess the machine gun, he

shall render judgment against him for the libellant for costs, to be taxed as in civil cases before such judge, and issue execution thereon, and shall declare such machine gun forfeited to the State. The claimants may appear and shall recognize with sureties as on appeals in civil actions from a judge. The judge may order that the machine gun remain in the custody of the seizing law enforcement officer, pending the disposition of the appeal. All machine guns declared forfeited to the State, or title to which have been transferred to the State in lieu of forfeiture proceedings shall be turned over to the Chief of the Maine State Police. If said machine gun is found to be of a historic, artistic, scientific or educational value, the State Police may retain the machine gun for an indefinite period of time. Any other machine gun declared forfeited and in possession of the State Police shall be destroyed by a means most convenient to the Chief of the State Police.

**1056. Possession of armor-piercing ammunition**

1. A person is guilty of possession of armor-piercing ammunition if, without authority to do so, the person knowingly possesses armor-piercing ammunition other than as part of a bona fide collection.

2. As used in this chapter, "armor-piercing ammunition" means a projectile or projectile core that may be used in a handgun and that is constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper or depleted uranium, including but not limited to ammunition commonly known as KTW ammunition. "Armor-piercing ammunition" does not include shotgun shot required by federal or state environmental or game laws, rules or regulations for hunting purposes, a frangible projectile designed for target shooting or any projectile or projectile core found by the United States Secretary of the Treasury or the secretary's delegate, pursuant to 27 Code of Federal Regulations, Section 178.148 or Section 178.149, to be:

A. Primarily intended to be used for sporting purposes; or

B. Used for industrial purposes, including a charge used in an oil and gas well perforating device.

3. Possession of armor-piercing ammunition is a Class C crime.

4. This section does not apply to members of the United States Armed Forces, the United States Reserve Forces or the National Guard, or to law enforcement officers or agencies or forensic laboratories, in the course of duty or employment.

**Chapter 47. General Sentencing Provisions**

**1158-A. Forfeiture of firearms**

1. As part of every sentence imposed, except as provided in subsection 2, a court shall order that a firearm must be forfeited to the State if:

A. That firearm constitutes the basis for conviction under:

(1) Title 15, section 393;

B. The State pleads and proves that the firearm is used by the defendant or an accomplice during the commission of any murder or Class A, Class B or Class C crime or any Class D crime defined in chapter 9, 11 or 13; or

C. The defendant, with the approval of the state, consents to the forfeiture of the firearm.

2. Except as provided in subsection 3, a court may not order the forfeiture of a firearm otherwise qualifying for forfeiture under subsection 1 if another person can satisfy the court by a preponderance of the evidence and prior to the imposition of the defendant's sentence that:

A. Other than in the context of either subsection 1, paragraph A, subparagraph (1) or subsection 1, paragraph B relative to murder or any other unlawful homicide crime in which the firearm used is a handgun, the other person, at the time of the commission of the crime, had a right to possess the firearm to the exclusion of the defendant;

B. In the context of subsection 1, paragraph A, subparagraph (1), the other person, at the time of the commission of the crime, had a right to possess the firearm to the exclusion of the defendant; or

C. In the context of subsection 1, paragraph B relating to murder or any other unlawful homicide crime in which the firearm used is a handgun, the other person, at the time of the commission of the crime, was the rightful owner from whom the handgun had been stolen and the other person was not a principal or accomplice in the commission of the crime.

3. If another person satisfies subsection 2, paragraph B, a court shall nonetheless order the forfeiture of a firearm otherwise qualifying for forfeiture under subsection 1, paragraph A, subparagraph (1) if the State can satisfy the court by a preponderance of the evidence both that the other person knew or should have known that the defendant was a prohibited person under Title 15, section 393 and that the other person intentionally, knowingly or recklessly allowed the defendant to possess or have under the defendant's control the firearm.

4. The Attorney General shall adopt rules governing the disposition to state, county and municipal agencies of firearms forfeited under this section. A handgun not excepted under subsection 2, paragraph C must be destroyed by the State.

5. As used in this section, "handgun" means a firearm, including a pistol or revolver, that has a short stock and is designed to be held and fired by the use of a single hand.

**Title 19-A. Domestic Relations**

**Chapter 101. Protection From Abuse**

**4006. Hearings**

1. **FULL HEARING.** Within 21 days of the filing of a complaint, a hearing must be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. If a request for temporary, emergency or interim relief is denied, the hearing must be held as soon as practicable within the 21-day period.

2. **TEMPORARY ORDERS.** The court may enter temporary orders authorized under subsection 5 that it considers necessary to protect the plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding, which the court shall hear and determine as expeditiously as practicable after the filing of a complaint. Immediate and present danger of abuse to the plaintiff or minor child constitutes

good cause. An order remains in effect pending a hearing pursuant to subsection 1.

**2-A. TEMPORARY ORDERS; POSSESSION OF DANGEROUS WEAPONS.** The court may direct the defendant not to possess a firearm or other dangerous weapon for the duration of the temporary order if the complaint demonstrates:

**A.** Abuse that involves a firearm or other dangerous weapon; or

**B.** A heightened risk of immediate abuse to the plaintiff or a minor child. In determining whether a heightened risk of immediate abuse is present, the court shall consider, but is not limited to consideration of, whether:

(1) The temporary order of protection is not likely to achieve its purpose in the absence of such a condition;

(2) The defendant has violated orders of protection;

(3) Past or present abuse to a victim resulted in injury;

(4) The abuse occurred in public; and

(5) The abuse includes:

(a) Threats of suicide or homicide;

(b) Killing or threatening to kill pets;

(c) An escalation of violence;

(d) Stalking behavior or extreme obsession;

(e) Sexual violence;

(f) Excessive alcohol or drug use; and

(g) Abuse against a pregnant victim.

If the court prohibits the defendant from possessing a firearm or other dangerous weapon in a temporary order and if the defendant moves for dissolution or modification of an order pursuant to subsection 7, the court must hear and decide the motion as expeditiously as possible and must issue a written decision on the motion within 24 hours after a hearing on that motion.

If the court prohibits the defendant from possessing a dangerous weapon other than a firearm in a temporary order, the court shall specify the type of weapon the defendant is prohibited from possessing.

If the court prohibits the defendant from possessing a firearm or other dangerous weapon in a temporary order, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms and other dangerous weapons at any location if there is probable cause to believe such firearms or dangerous weapons have not been relinquished by the defendant.

#### 4007. Relief.

**1. PROTECTION ORDER; CONSENT AGREEMENT.** The court, after a hearing and

upon finding that the defendant has committed the alleged abuse, may grant a protective order or, upon making that finding, approve a consent agreement to bring about a cessation of abuse. This subsection does not preclude the parties from voluntarily requesting a consent agreement without a finding of abuse. The court may enter a finding that the defendant represents a credible threat to the physical safety of the plaintiff or a minor child residing in the plaintiff's household. Relief granted under this section may include:

**A-1.** Directing the defendant not to possess a firearm or other dangerous weapon for the duration of the order;

**1-A. NO POSSESSION OF FIREARM OR DANGEROUS WEAPONS FOR DURATION OF ORDER.** If the court prohibits the defendant from possessing a dangerous weapon other than a firearm, the court shall specify the type of weapon the defendant is prohibited from possessing.

If the court prohibits the defendant from possessing a firearm or other dangerous weapon, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms and other dangerous weapons at any location if there is probable cause to believe such firearms or dangerous weapons have not been relinquished by the defendant.

## Title 25. Internal Security and Public Safety

### PART 5. Public Safety

#### Chapter 252-A. Firearms Regulations

##### 2011. State preemption

**1. PREEMPTION.** The State intends to occupy and preempt the entire field of legislation concerning the regulation of firearms, components, ammunition and supplies. Except as provided in subsection 3, any existing or future order, ordinance, rule or regulation in this field of any political subdivision of the State is void.

**2. REGULATION RESTRICTED.** Except as provided in subsection 3, no political subdivision of the State, including, but not limited to, municipalities, counties, townships and village corporations, may adopt any order, ordinance, rule or regulation concerning the sale, purchase, purchase delay, transfer, ownership, use,

possession, bearing, transportation, licensing, permitting, registration, taxation or any other matter pertaining to firearms, components, ammunition or supplies.

**3. EXCEPTION.** This section does not prohibit an order, ordinance, rule or regulation of any political subdivision which, with the exception of appropriate civil penalty provisions, conforms exactly with any applicable provision of state law or which regulates the discharge of firearms within a jurisdiction.

**4. LAW ENFORCEMENT AGENCY.** Nothing in this section limits the power of any law enforcement agency to regulate the type and use of firearms issued or authorized by that agency for use by its employees. For the purposes of this section "law enforcement agency" has the same meaning as set forth in section 3701.

##### 2012. Sale of firearms to include safety brochure

**1. DEFINITIONS.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A.** "Basic firearm safety brochure" means a brochure, produced by a national, nonprofit membership organization that provides a comprehensive voluntary safety program including the training of people in the safe handling and use of firearms or by any other organization that contains the following information relating to firearms:

(1) Rules for safe handling, storage and use of firearms;

(2) Nomenclature and descriptions of various types of firearms; and

(3) Responsibilities of firearm ownership.

**B.** "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

**C.** "Firearm dealer" means a person who is licensed as a dealer under 18 United States Code, Section 923, or who is required to be licensed as a dealer under that section.

**2. REQUIREMENT.** A firearm dealer must:

**A.** Include a basic firearm safety brochure with every firearm sold at retail in this State, except that the brochure need not be supplied by the firearm dealer if the firearm manufacturer provides a basic firearm safety brochure with the firearm. The dealer may collect a charge for the brochure, which may not be greater than the dealer's cost to obtain the brochure;

**B.** Offer to demonstrate to the purchaser the use of a trigger locking device; and

**C.** Post in a conspicuous place information relating to the availability of known local voluntary firearm safety programs.

**3. NO LIABILITY.** Organizations that produce basic firearm safety brochures for distribution to firearm dealers for subsequent distribution to purchasers of firearms and firearm dealers are not liable for injuries resulting from the accidental discharge of nondefective firearms purchased from any dealer.

[Current through emergency legislation through Chapter 150 of the 2009 First Regular Session of the 124th Legislature]