

Montana State Law
MT Code Ann.
Title 45. Crimes

Chapter 6. Offenses Against Property

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 * * * firearm with the purpose to conceal, misrepresent, or transfer any such * * * firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any * * * 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 * * * 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. Section 45-8-302 through 45-8-309 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

45-8-302. Definitions. In 45-8-303 through 45-8-309 the following definitions apply:

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

(2) **"Machinegun"** means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semi-automatically discharged from a magazine by a single function of the firing device.

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

45-8-304. Possession or use of machinegun for offensive purposes. Possession or use of a machinegun 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 machinegun shall be presumed to be for offensive or aggressive purpose:

(1) when the machinegun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machinegun may be found;

(2) when the machinegun 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;

(3) when the machinegun is of the kind described in 45-8-309 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machinegun are found in the immediate vicinity thereof.

45-8-307. Exceptions. Nothing contained in 45-8-301 through 45-8-309 shall prohibit or interfere with:

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

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

(3) the possession of a machinegun other than one adapted to use pistol cartridges of 30 (30 in. or 7.63 mm) or larger caliber for a purpose manifestly not aggressive or offensive.

45-8-308. Manufacturer's register of machineguns.

(1) Every manufacturer shall keep a register of all machineguns manufactured or handled by him.

(2) This register shall show, for every machinegun:

(a) the model and serial number;

(b) the date of manufacture, sale, loan, gift, delivery, or receipt;

(c) the name, address and occupation of the person to whom the machinegun was sold, loaned, given, or delivered or from whom received; and

(d) the purpose for which it was acquired by the person to whom the machinegun was sold, loaned, given, or delivered or from whom received.

(3) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machineguns, parts, and supplies therefor and shall produce the register herein required for inspection.

(4) A violation of any provision of this section shall be punishable by a fine of not less than \$100.

45-8-309. Registration of machineguns - presumption from failure to register.

(1) Every machinegun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered with the department of justice annually on February 20. If acquired hereafter it shall be registered within 24 hours after its acquisition.

(2) Blanks for registration shall be prepared by the department and furnished upon application.

(3) To comply with this section the application as filed must show the model and serial number of the gun, the name, address, and occupation of the person in possession, and from whom and the purpose for which the gun was acquired.

- (4) The registration data shall not be subject to inspection by the public.
- (5) Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

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

45-8-321. 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 issuance. 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. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed

forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institute of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a Law enforcement firearms safety or training course offered to or required of public or private Law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a License from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the sheriff may or may not accept that the applicant, during military service, was found to be qualified to operate handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in Subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

Publisher's Note:

The Bureau of Alcohol, Tobacco and Firearms has determined that the Montana concealed weapons permit law (Montana Code, Section 45-8-321) is an alternative to the five day wait and background check requirements of the Brady Handgun Violence Prevention Act (Brady Law), 18 U.S.C. 922(s)(1)(B)-(D), provided that such a permit is good for not more than five years, 18 U.S.C. 922(s)(1)(C).

45-8-330. Exemption of concealed weapon permitted 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 925 A; and
- (2) is exempt from the 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.)

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 flash point 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. * * * *

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.

Publisher's Note:

A Montana resident may not make, obtain or possess a silencer. MT State advisory, 11-08-84

45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filed 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 no more than \$500, imprisoned in the county jail or 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 imprisonment 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 the regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provi-

sions 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 a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and the 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. 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 of any description loaded with powder and lead, 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 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 weapons 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 licensure. 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 indi-

vidually 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 Zone Act of 1990.