

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-1. Has been convicted of committing or found not criminally responsible by reason of mental disease or defect 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;

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]

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

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.

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 mental disease or defect 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 mental disease or defect, 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 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 of Public Safety for a permit to carry a firearm. That person may not be issued a permit to carry a concealed firearm pursuant to Title 25, chapter 252.

3. Contents. The application shall be on a form prepared by the Commissioner of Public Safety. The application shall 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; the reason for the request; and any other information deemed by the commissioner to be of assistance. The application shall be accompanied by certified or attested copies of the indictment, information or complaint, judgment and commitment and discharge which are the subject of the conviction.

4. Notification, objection and hearing. Upon receipt of an application, the Commissioner of Public Safety shall determine if it is in proper form. If the application is proper, he shall within 30 days notify in writing the sentencing 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 which 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, none shall be

issued. The commissioner may deny an application if no objection is filed.

5. Appeal. Any person to whom a permit has been denied may appeal to the Superior Court of Kennebec County. The decision of the commissioner may not be overturned unless the court shall find that the applicant's request is reasonable and that the denial of the commissioner was arbitrary, capricious or discriminatory.

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 mental disease or defect" has the same meaning as used in Title 17-A, section 39 and includes the former finding in this State under former provisions of section 103 of "not guilty by reason of mental disease or defect excluding responsibility" as well as 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.

8. Penalty. A violation of subsection 1, paragraph A-1 or C is a Class C crime. A violation of subsection 1, paragraph D 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.

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 the equivalent in a juvenile case, by a court of competent jurisdiction.

Chapter 17. Miscellaneous Provisions

455. Record of sales of firearms. A dealer may not sell, let or loan any firearm to any 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, and is open to the inspection of any sheriff, deputy sheriff, police officer, constable, game warden or prosecuting attorney. Any dealer who fails to keep the copy or refuses to show it to any officer listed in this section commits a civil violation for which a forfeiture not to exceed \$50 may be adjudged. Whoever gives a false or fictitious name to the dealer commits a civil violation for which a forfeiture not to exceed \$50 may be adjudged. This section does not apply to wholesalers who sell only to other dealers or to manufacturers who sell 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 17A. 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. [Effective until Jan. 31, 2003:] For purposes of this subsection, a thing presented in a covered or open manner as a dangerous weapon shall be presumed to be a dangerous weapon. **[Effective Jan. 31, 2003:]** 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, gunpowder, 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. 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.

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 libelant or claimant. If the judge is, upon hearing, satisfied that said machine gun was not possessed in vio-

lation 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 libelant 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. Forfeiture of firearms. [Effective until Jan. 31, 2003:] As part of every judgment of conviction and sentence imposed, every firearm that constitutes the basis for conviction under Title 15, section 393 or under section 1105, subsection 1, paragraph C or that is used by the defendant or any 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 must be forfeited to the State and the court shall so order, unless another person can satisfy the court prior to the judgment and by a preponderance of the evidence that such other person had a right to possess the firearm, to the exclusion of the defendant, at the time of the offense. The Attorney General shall adopt rules in accordance with Title 5, chapter 375, governing the disposition to state, county and municipal agencies of firearms forfeited under this section. ... For purposes of this section, "handgun" means a firearm, including a pistol or revolver, designed to be fired by use of a single hand.

[Effective Jan. 31, 2003:] As part of every judgment of conviction and sentence imposed, a firearm must be forfeited to the State if that firearm:

1. Constitutes the basis for conviction under:

A. Title 15, section 393; ...

The court shall order the forfeiture of the firearm unless another person can satisfy the court prior to the judgment and by a preponderance of the evidence that another person had a right to possess the firearm, to the exclusion of the defendant, at the time of the offense. The Attorney General shall adopt rules in accordance with Title 5, chapter 375 governing the disposition to state, county and municipal agencies of firearms forfeited under this section.

A confiscated or forfeited handgun that was confiscated or forfeited because it was used to commit a homicide must be destroyed by the State unless the handgun was stolen and the rightful owner was not the person who committed the homicide, in which case the handgun must be returned to the owner if ascertainable. For purposes of this section, "handgun" means a firearm, including a pistol or revolver, designed to be fired by use of a single hand.]

Title 19-A. Domestic Relations

Chapter 101. Protection From Abuse

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;

Title 25. Internal Security and Public Safety

Chapter 252. Permits to Carry Concealed Firearms

2001. Threatening display of or carrying a concealed weapon. No person may display in a threatening manner, or wear under his clothes or conceal about his person, any firearm, slung shot, knuckles, bowie knife, dirk, stiletto or other dangerous or deadly weapons usually employed in the attack on or defense of a person, unless excepted by a provision of law.

The provisions of this section concerning the carrying of concealed weapons do not apply to:

1. **Permit issued.** Firearms carried by any person to whom a valid permit to carry a con-

cealed firearm has been issued as provided in this chapter;

2. **Disabling chemicals.** Disabling chemicals as described in Title 17-A, section 1002;

3. **Hunting knives.** Knives used for the purposes of hunting, fishing or trapping as defined in Title 12, section 7001;

4. **Law enforcement officers and corrections officers.** Law enforcement officers and corrections officers as permitted in writing by their employer;

5. **Private investigators.** [Repealed]

6. **Licensed hunters and trappers.** Firearms carried by any person engaged in conduct for which a state-issued hunting or trapping license is required and possessing the required license, or firearms carried by a resident person engaged in conduct expressly authorized by Title 12, section 7377, subsections 1 and 2. This subsection does not authorize or permit the carrying of a concealed or loaded firearm in a motor vehicle; and

7. **Permit issued by another state or country.** A firearm carried by a person to whom a valid permit to carry a concealed firearm has been issued by another state or country if a permit to carry a concealed firearm issued from that state or country has been granted reciprocity. The Chief of the State Police may enter into reciprocity agreements with 2 other states. Reciprocity may be granted to a permit to carry a concealed firearm issued from another state or country if:

A. The other state or country that issued the permit to carry a concealed firearm has substantially equivalent or stricter requirements for the issuance of a permit to carry a concealed firearm; and

B. The other state or country that issued the permit to carry a concealed firearm observes the same rules of reciprocity in regards to a person issued a permit to carry a concealed firearm under this chapter.

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 2nd Regular & 1st Special Sessions 120th Me. Legislature (May & Nov. 2002), including 2002 Me. Laws 549 (LD 681) & 667 (LD 2083)]