

Montana State Laws and Published Ordinances

Current through February 12, 2019, of the 2019 regular session 66th Legislature.

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Table of Contents

Title 40. Family Law

Chapter 15. Partner and Family Member Assault, Sexual Assault, and Stalking – Safety and Protection of Victims Part. Order of Protection

§ Sec. 40-15-201 Temporary order of protection.

Title 45. Crimes

Chapter 5. Offenses Against the Person Part 2. Assault and Related Offenses

§ Sec. 45-5-206 Partner or family member assault — penalty.

Chapter 6. Offenses Against Property Part 3. Theft and Related Offenses

45-6-326 Obscuring identity of machine.

Chapter 8. Offenses Against Public Order Part 3. Weapons

45-8-301 Uniformity of interpretation.

45-8-302 Definitions.

45-8-303 Possession or use of machine gun in connection with a crime.

45-8-304 Possession or use of machine gun for offensive purpose.

45-8-305 Presumption of offensive or aggressive purpose.

45-8-307 Exceptions.

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

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

45-8-318 Possession of deadly weapon by prisoner or youth in facility.

45-8-321 permit to carry concealed weapon.

45-8-322 Application, renewal, permit, and fees.

45-8-323 Denial of renewal – revocation of permit.

45-8-324 Appeal.

45-8-325 Permittee change of county of residence – notification to sheriffs and chief of police.

45-8-326 Immunity from liability.

45-8-330 (Temporary) Exemption of concealed weapon permittee from federal handgun purchase background check and waiting period.

45-8-336 Possession of silencer.

45-8-337 Possession of unregistered silencer or of bomb or similar device prima facie evidence of unlawful purpose.

45-8-340 Sawed-off firearm – penalty.

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

Baker
Livingston

Title 40. Family Law

Chapter 15. Partner and Family Member Assault, Sexual Assault, and Stalking – Safety and Protection of Victims

Part 2. Order of Protection

§ Sec. 40-15-201 Temporary order of protection.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(f) prohibiting the respondent from possessing or using the firearm used in the assault;

Title 45. Crimes

Chapter 5. Offenses Against the Person

Part 2. Assault and Related Offenses

§ Sec. 45-5-206 Partner or family member assault — penalty.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

Chapter 6. Offenses Against Property

Part 3. Theft and Related Offenses

§ Sec. 45-6-326 Obscuring identity of machine.

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

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

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

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

(3) The fact of possession or transfer of any machine, vehicle, electrical device, or firearm described in subsection (1) 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

§ Sec. 45-8-301 Uniformity of interpretation.

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

§ Sec. 45-8-302 Definitions.

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

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

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

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

§ Sec. 45-8-303 Possession or use of machine gun in connection with a crime.

Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 20 years.

§ Sec. 45-8-304 Possession or use of machine gun for offensive purpose.

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

§ Sec. 45-8-305 Presumption of offensive or aggressive purpose.

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

§ Sec. 45-8-307 Exceptions.

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

- (1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision of the United States or transportation required for that purpose;
- (2) the possession of a machine gun for a scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;
- (3) the possession of a machine gun for a purpose manifestly not aggressive or offensive.

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

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

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

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

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

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

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

(2)

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

(b) The application must contain the following information:

- (i) the person's full name and any past or present aliases;
- (ii) the person's date and place of birth;
- (iii) the person's address;
- (iv) the person's occupation;
- (v) the make and model of each firearm sought to be purchased and possessed;
- (vi) the date and place of each conviction of an offense referred to in 45-8-313, the name of the offense, the state and county in which the offense occurred, the sentence imposed, the place or places of incarceration, and the date of discharge from supervision for the last offense;
- (vii) the name and business address of the person's last probation or parole officer; and
- (viii) any other information considered necessary by the court.

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

(d) The county attorney or county sheriff may file a written objection with the court. If no objection is filed, the court may grant the permit if it finds that the person has shown good cause to purchase and possess the firearm or firearms listed in the application. If an objection is filed, a hearing must be held within 60 days after the filing of the objection. If

the court first finds that the person has shown good cause to purchase and possess the firearm or firearms listed in the application and that, but for the objection, the court would have granted a permit, the court shall decide whether the objection is valid and overrides the good cause showing and requires denial of the permit.

§ Sec. 45-8-318 Possession of deadly weapon by prisoner or youth in facility.

(1) A person commits the offense of possession of a deadly weapon by a prisoner if the person purposely or knowingly possesses or carries or has under the person's custody or control without lawful authority a dirk, dagger, pistol, revolver, ...or other deadly weapon while the person is:

(a) a person committed to a state prison or incarcerated in a county jail, city jail, or regional jail and is:

(i) at a state prison, a state prison farm or ranch, or jail;

(ii) being conveyed to or from a place listed in this subsection (1)(a); or

(iii) under the custody of prison or jail officials, officers, or employees; or

(b) a person in a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, or shelter care facility, as those terms are defined in 41-5-103, and is at the facility, being conveyed to or from the facility, or under the custody of the facility officials, officers, or employees.

(2) A person convicted of the offense of possession of a deadly weapon by a prisoner shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, by a fine of not more than \$50,000, or by both fine and imprisonment.

(3) The youth court has jurisdiction of any violation of subsection (1)(b) unless the charge is filed in district court, in which case the district court has jurisdiction.

§ Sec. 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 or permanent lawful resident 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) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration; or

(ii) 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, 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 disordered, 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 disordered, 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 institution 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 applicant, during military service, was found to be qualified to operate firearms, including 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.

(6) A person, except a person referred to in subsection (1)(c)(ii), who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible.

§ Sec. 45-8-322 Application, renewal, permit, and fees.

(1) The application form must be readily available at the sheriff's office and must read as follows:

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is \$50. The permit must be renewed for additional 4-year periods upon payment of a \$25 fee for each renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must, at a minimum, include the name, address, physical description, signature, driver's license number, state identification card number, or tribal identification card number, and a picture of the permittee. A person in the United States armed forces satisfies the requirement of submitting a picture if the person submits pictures of the front of the person's military identification card and the person's Montana driver's license. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a background check of an applicant to determine whether the applicant is eligible for a permit under 45-8-321, may require an applicant to submit the applicant's fingerprints, and may charge the applicant \$5 for fingerprinting. A renewal does not require repeat fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

(7) All of the information on the application is confidential, and the sheriff shall treat the confidential information on the application as confidential criminal justice information pursuant to Title 44, chapter 5.

§ Sec. 45-8-323 Denial of renewal – revocation of permit.

A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license. A decision to deny an applicant a renewal must be made within 60 days after the filing of an application.

§ Sec. 45-8-324 Appeal.

The denial or revocation of a permit to carry a concealed weapon or refusal of a renewal is subject to appeal to the district court, which may consider and determine facts as well as law and which is not bound by any factual, legal, or other determination of the sheriff, and from that court to the Montana Supreme Court. To the extent applicable, Title 25, chapter 33, governs the appeal.

§ Sec. 45-8-325 Permittee change of county of residence – notification to sheriffs and chief of police.

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

§ Sec. 45-8-326 Immunity from liability.

A sheriff, employee of a sheriff's office, or county is not liable for damages in a civil action by a person or entity claiming death, personal injury, or property damage arising from alleged wrongful or improper grant of, renewal of, or failure to revoke a permit to carry a concealed weapon, except for actions that constitute willful misconduct or gross negligence.

§ Sec. 45-8-330 (Temporary) Exemption of concealed weapon permittee from federal handgun purchase background check and waiting period.

A person possessing a concealed weapon permit is:

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

§ Sec. 45-8-336 Possession of silencer.

(1) A person commits the offense of possession of a silencer if the person 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 by a fine of not less than \$1,000 or more than \$20,000, or both.

§ Sec. 45-8-337 Possession of unregistered silencer or of bomb or similar device prima facie evidence of unlawful purpose.

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

§ Sec. 45-8-340 Sawed-off firearm – penalty.

(1) A person commits the offense of possession of a sawed-off firearm if the person 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 member of the national guard;

(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, firearms and explosives; 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 shall be fined not less than \$200 or more than \$500 or be imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has 1 or more prior convictions under this section or 1 or more prior felony convictions under a law of this state, another state, or the United States, the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

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

(1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2)

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

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317.

Baker Code of Ordinances

Current through Ordinance No. 376, enacted February 7, 2018. (Supp. No. 8)

**Title 9. Public Peace, Safety and Morals
Chapter 9.20. Firearms**

§ Sec. 9.20.030 Possession of firearms by certain individuals prohibited.

It shall be illegal for any convicted felon, any person adjudicated mentally incompetent, any illegal alien and any minor to have in his or her possession any firearms.

§ Sec. 9.20.050 Violation-Penalty.

Any person convicted of violating any provisions of this chapter shall be guilty of a misdemeanor and shall be subject to a fine of no less than fifty dollars nor more than three hundred dollars and shall further be subject to serving no more than thirty days in the city jail or both as the court may determine.

Livingston Municipal Code

Current through Ordinance No. 2062, enacted April 19, 2016. (Supp. No. 12)

**Title 10. Miscellaneous Offenses
Article IV. Weapons and Other Offenses**

§ Sec. 10.19.1 Firearms, unlawful purchase or possession.

No person who has been adjudicated as mentally incompetent, or who is an illegal alien may purchase or possess a firearm, and a minor may not purchase a firearm.

§ Sec. 10.19.6 Penalty.

A person convicted hereunder shall be punished by a fine not to exceed five hundred dollars (\$500.00) and/or imprisoned in the county jail for any term not to exceed six (6) months.