

**Opinion No. 54**

**CHILDREN: Use of firearms by—FIREARMS: Children under fourteen using—Section 94-3579, Revised Codes of Montana, 1947.**

**Held: Instructors in the safe handling of firearms may allow children under fourteen years of age to carry and use loaded firearms under the supervision of the instructor but in the absence of the child's parents or legal guardian.**

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December 28, 1962

Mr. O. J. Paulson  
Sweet Grass County Attorney  
Big Timber, Montana

Dear Mr. Paulson:

You have directed my attention to Section 94-3579, Revised Codes of Montana, 1947, which provides:

"It shall be unlawful for any parent, guardian, or other person, having the charge or custody of any minor child under the age of fourteen years, to permit such minor child to carry or use any firearms of any description, loaded with powder and lead, in public, except when such child is in the company of such parent or guardian."

You ask if this statute would prohibit instructors in the handling of firearms from allowing children under the age of fourteen years to carry and use loaded firearms under the supervision of the instructor but in the absence of the child's parent or guardian.

In construing a penal statute, it is necessary to examine the purpose of the statute and the evil sought to be remedied thereby. *Mulholland v. Ayers*, 109 Mont. 558, 99 Pac. 2d 234. Here the evil sought to be remedied is the unsupervised use of firearms by children under fourteen years of age. The purpose of the statute is to require supervision for children under fourteen when using firearms. Essentially, your question is who may supply this supervision under the statute.

To construe this statute as requiring the parent or legal guardian to be present whenever a child under fourteen carried firearms would seem to be unduly restrictive of the rights of both parent and child. More important, such a construction would in no way contribute to effectuating the primary purpose of the statute.

To assure the safe use of firearms by children under fourteen, which is the primary purpose of this statute, the supervision of a qualified instructor would seem preferable to that of a parent unskilled in the use of firearms.

A teacher stands "in loco parentis" to his pupils. *Brooks v. Jacobs*, 139 Me. 371, 31 A 2d 414; *Guerreri v. Tyson*, 147 Pa. Super, 239, 24 A. 2d 468. "Guardian" is defined as "one to whom a person is entrusted for protection." Webster's Third New International Dictionary, p. 1007. Thus an instructor in a regular course of instruction in the safe handling of firearms such as the State Fish and Game Department provides pursuant to Section 26-202.1, RCM, 1947, is a "parent" or "guardian" for the purposes of compliance with Section 94-3579.

It is therefore my opinion that instructors in the handling of firearms may allow children under fourteen years of age to carry and use loaded firearms under the supervision of the instructor but in the absence of the child's parent or legal guardian.

Very truly yours,  
FORREST H. ANDERSON  
Attorney General