**CHAPTER EIGHT**

**OFFENSES AGAINST PUBLIC ORDER**

No. Subject

8-101 Carrying Concealed Firearm

8-101(a) Issues in Carrying Concealed Firearm

8-102 Possession of Explosives

8-102(a) Issues in Possession of Explosives

INSTRUCTION NO. **[8-101]**

**[Carrying Concealed Firearm]**

A person who is ineligible to possess a firearm under state or federal law commits the offense of carrying a concealed firearm if the person **[(purposely) (knowingly)]** carries or bears upon **[his] [her]** person a firearmwholly or partially covered by his or her clothing or wearing apparel.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 8-101 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Carrying Concealed Firearm, No. 8-101, 2022, Source and Comment]**

SOURCE: MCA §§ 45-8-315, -316 (2021)

COMMENT: This instruction is a combination of the two statutes that define the crime.

INSTRUCTION NO. **[8-101(a)]**

**[Issues In Carrying a Concealed Firearm]**

To convict the Defendant of Carrying a Concealed Firearm, the State must prove the following elements:

1. That the Defendant carried or bore upon [his] [her] person a firearm;

**AND**

2. That the firearm was wholly or partially covered by the Defendant’s clothing or wearing apparel;

**AND**

3. That the Defendant was ineligible to possess a firearm under state or federal law;

**[AND**

**4. That the Defendant acted purposely or knowingly.]**

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 8-101(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Carrying Concealed Weapon, No. 8-101(a), 2022, Source and Comment]**

SOURCE: MCA §§ 45-8-315, -316 (2021)

COMMENT: The statutes defining the offense do not specify a mental state element. However, under MCA § 45-2-104, “A person may be guilty of an offense without having, as to each element of the offense, one of the mental states of knowingly, negligently, or purposely only if the offense is punishable by a fine not exceeding $500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.” Although the basic misdemeanor penalty for a violation of these statutes set forth in MCA § 45-8-316(1) falls within the exception in MCA § 45-2-104, the enhanced penalty set forth in MCA § 45-8-316(2) does not. In the latter situation, one of the mental states of purposely or knowingly must be alleged and proven, *see* MCA § 45-2-104 (2021), and the bracketed language should be used.

If an issue for the jury, an additional instruction is needed to assist the jury’s determination of whether the accused is ineligible to possess a firearm under state or federal law.

INSTRUCTION NO. **[8-102]**

**[Possession of Explosives]**

A person commits the offense of possession of explosives if the person **[(possesses) (manufactures) (transports) (buys) (sells)]** **[(an explosive compound) (flammable material) (a timing, detonating or similar device for use with an explosive compound or incendiary device)]** and **[(has the purpose)** or **(knows that another has the purpose)]** to use such **[(explosive) (material) (device)]** to commit an offense.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 8-102 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Possession of Explosives, No. 8-102, 2022, Source]**

SOURCE: MCA § 45-8-335 (2021)

INSTRUCTION NO. **[8-102(a)]**

**[Issues in Possession of Explosives]**

To convict the Defendant of the charge of possession of explosives, the State must prove the following elements:

1. That the Defendant **[(possessed) (manufactured) (transported) (bought) (sold)] [(an explosive compound) (flammable material) (a timing, detonating or similar device for use with an explosive compound or incendiary device)]**;

**AND**

2. That the Defendant had the purpose to use such **[(explosive) (material) (device)]** to commit an offense;

**OR**

2. That the Defendant knew that another had the purpose to use such **[(explosive) (material) (device)]** to commit an offense.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 8-102(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Possession of Explosives, No. 8-102(a), 2022, Source]**

SOURCE: MCA § 45-8-335 (2021)