

CHAPTER EIGHT

OFFENSES AGAINST PUBLIC ORDER

<u>No.</u>	<u>Subject</u>
8-101	Carrying Concealed Weapon
8-101(a)	Issues in Carrying Concealed Weapon
8-102	Possession of Explosives
8-102(a)	Issues in Possession of Explosives

INSTRUCTION NO. [8-101]

[Carrying Concealed Weapon]

A person commits the offense of carrying a concealed weapon if that person carries or bears upon his/her person a **[dirk] [dagger] [pistol] [revolver] [slingshot] [sword cane] [billy] [knuckles made of any metal or hard substance] [knife having a blade 4 inches long or longer] [razor, not including a safety razor] [or other deadly weapon]** wholly or partially covered by his or her clothing or wearing apparel.

GIVEN: _____
DISTRICT JUDGE

Source: MCJI 8-101 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Carrying Concealed Weapon, No. 8-101, 2009, Source and Comment]

SOURCE: MCA § 45-8-316 and § 45-8-315 (2007).

COMMENT: This instruction is a combination of the two statutes that define the crime. Depending on the nature of instrument alleged to be a weapon, it may also be necessary to instruct on the definition of weapon as contained in MCA § 45-2-101(79) (2007).

INSTRUCTION NO. [8-101(a)]

[Issues In Carrying Concealed Weapon]

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

1. That the Defendant carried upon his or her person a **[dirk] [dagger] [pistol] [revolver] [slingshot] [sword cane] [billy] [knuckles made of any metal or hard substance] [knife having a blade 4 inches long or longer] [razor which is not a safety razor] [_____];**

AND

2. That the object carried was wholly or partially covered by Defendant's clothing or wearing apparel;

AND

3. 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) (2009)

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Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____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), 2009, Source and Comment]

SOURCE: MCA §§ 45-8-315; 45-8-316 (2007).

COMMENT: If the object involved is not one of the enumerated weapons, then the jury should be instructed that it must decide the additional element of whether the object was a weapon. The definition of weapon should also be given. *See* MCA § 45-2-101(2007).

The statutes defining the offense do not specify a mental state element. It also should be noted that a person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction, for which a sentence to a term of imprisonment in excess of one year could have been imposed and who carries or bears concealed upon his person any of the weapons described above can be convicted of a felony with a fine not exceeding one thousand dollars or imprisonment for a period not exceeding five years or both. In this situation, one of the mental states of knowingly, negligently, or purposely must be alleged and proven. *See* MCA § 45-2-104 (2007).

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 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Possession of Explosives, No. 8-102, 2009, Source]

SOURCE: MCA § 45-8-335 (2007).

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) (2009)

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), 2009, Source]

SOURCE: MCA § 45-8-335 (2007).