

## Schools and Michigan's Open Carry Gun Law

Despite the fact that this topic has been getting a fair amount of press recently, there remains a great deal of confusion concerning Michigan's gun laws and the rights of school districts to limit or prohibit weapons on school grounds. What follows is a breakdown of the current state of the law as well as recommendations on how to handle these situations both in the school and at board meetings.

### BACKGROUND

#### THE INDIVIDUAL

- **The "Average Citizen"** - It is currently considered legal for anyone, even individuals who do not possess a Concealed Pistol License (CPL), to openly carry a firearm in Michigan. We can refer to this group of individuals as the "average citizen." There is no statute which explicitly allows the average citizen to open carry, but there is also no statute prohibiting it. As such, it has been concluded that a citizen can (assuming he or she has not been banned from owning a gun due to a prior felony conviction, etc.) openly carry a firearm in areas that are not consider "gun free zones."
- **The CPL Licensee** - In contrast to "the average citizen," individuals who possess a CPL can both open carry a firearm and carry a *pistol* (not any other type of firearm) in a concealed fashion in areas that are not considered "pistol free zones."

#### THE LAW

- Michigan law ([MCL 750.234d](#)) has declared it illegal (90-day misdemeanor) for the average citizen to possess a *firearm* in what are labeled "gun free zones." These include banks/credit unions, churches, hospitals, daycares, courts, theaters, sports arenas and (essentially) bars. *Schools are not included on the list of "gun free zones."*
- Federal law has declared that schools are to be gun free zones under the commerce clause ([18 U.S.C. § 922\(q\)\(2\)\(a\)](#)). We generally refer to these as "weapon free school zones." However, this law does not prohibit possession of a firearm in a weapon free school zone by individuals who have been issued a state license to possess a gun, so long as the process for issuing the license contains a background check conducted by law enforcement. Hence, Michigan CPL licensees qualify under this exception.
- Michigan law ([MCL 750.237a](#)) has declared it illegal (93-day misdemeanor) to possess a firearm in a "weapon free school zone." However, this law carves out the same exception as the federal law with respect to CPL Licensees.
- Another state law ([MCL 28.425o](#)) prohibits CPL Licensees from carrying a *concealed* weapon in what we can term "pistol free zones." The list of "pistol free zones" is

generally similar to those listed as “gun free zones,” except that the list for “pistol free zones” also includes schools. As it relates to schools and school property, this statute indicates that CPL Licensees can be “carrying” a pistol in a concealed fashion so long as they are a parent or legal guardian who is dropping off or picking up a child and the pistol remains in the vehicle. This essentially acts as a ban on carrying a concealed weapon on school grounds outside of one’s vehicle. This law does not address *open carrying* by a CPL licensee.

## **THE BOTTOM LINE**

**If an individual is a CPL licensee they can openly carry a weapon onto the property of a public school.**

This labyrinth of statutes and exceptions has led us to the current interpretation of the law by the Michigan Court of Appeals (See [Capital Area District Library v. Michigan Open Carry Inc.](#), (2012)), which is that the average citizen cannot possess a firearm on school property in any manner but a CPL licensee can, so long as it is being carried openly. Concealed weapons, which can legally be carried only by a CPL licensee, are explicitly banned.

The State Supreme Court refused to hear the matter after the Court of Appeals ruling was handed down; meaning that a change to the law will now most likely have to come from the legislature. Some lawmakers are attempting to address this issue by introducing legislation which would ban the open carry of firearms in schools or otherwise add schools to the list of gun free zones as outlined in MCL 750.234d. This is being met with significant opposition from the gun lobby.

Some school districts have developed their own “policies” with respect to openly carrying a gun on school property. These policies vary in terms of their scope and effectiveness. Some schools have attempted to ban any weapons on the premises at all times, others demand that the gun be “checked in” at the office before proceeding to a classroom, while still others mandate that the individual and the gun remain in the office while a member of the staff escorts the child to/from their classroom, etc. Regardless, the reality is that any policy which attempts to restrict a CPL licensee’s right to openly carry a firearm on school grounds would most likely be deemed contrary to law and unenforceable if it were challenged.

Most of the administrators who have implemented these policies are aware that they may not be enforceable if challenged, but feel compelled to maintain the policy as part of their overarching responsibility to maintain a safe school. Administrators always have the right to request that an individual leave their gun in their car, check it in at the school office, etc., but ultimately they probably cannot force the issue. Sometimes the individual will comply with a simple request to leave their firearm behind, but often times the person is an “open carry

advocate” who is specifically looking to be challenged in order to draw attention to the school’s “illegal” policy. Sometimes police involvement occurs; which is often exactly what the “open carry advocate” is hoping will occur.

Ultimately, the present state of the law is on the side of the citizen and, more than likely, the police will inform the school that so long as the individual is a CPL licensee and is carrying their weapon openly, it is a violation of their rights to prohibit them access to the school for any legitimate purpose. This is particularly true in situations where there have been previous confrontations with the individual and the administrators can no longer claim that they were “unaware” of the person’s identity (which directly relates to whether or not they are on the premises for a legitimate purpose) and whether or not they possess a valid CPL.

## **BOARD MEETINGS**

The subject of firearms at board meetings has also become an issue and, in general, the same rules apply; a CPL licensee has a legal right to open carry a firearm at any school board meeting that is being held on school property. This includes any building owned by the district, even if it is not, technically, a school (such as an administration building). Likewise, board members should be advised that public meetings held at facilities which are not owned by the district, such as a local township hall, are likely not subject to the restrictions outlined in any of the three Michigan statutes: meaning that the average citizen can open carry to the meeting while the CPL licensee can conceal carry, so long as the meeting place does not also happen to be a “gun free zone” or “pistol free zone.”

The subject of guns at board meetings is particularly worrisome because of the added factor that contentious issues are often discussed and tempers can sometimes flair (the same rationale that applies to banning weapons at sports arenas). Obviously, an outspoken individual who also happens to have a gun with them can make others in attendance feel very ill-at-ease. This can also have a chilling effect on dialogue and inhibit the free discussion of thoughts, opinions and ideas. There is also the fear that the intimidation factor might influence a board member’s vote. Never-the-less, the law protecting a person’s open carry rights remains.

However, an individual’s legal right to open carry a firearm does not mean that they cannot be ordered to leave a meeting should their behavior be deemed threatening or otherwise inappropriate. The same rules that apply to the community at large also apply to a CPL licensee carrying a gun with respect to behavior and decorum. People behaving badly can be kicked-out. If called upon to justify the decision to remove the individual, the board should always cite the person’s behavior, not the fact that they were carrying a gun. Likewise, banning any

particular individual from attending future board meetings should be based upon the behavior of the individual, not the fact that they were carrying a firearm.

Frankly, whether or not an individual is behaving in a “threatening” manner, and how much of that perception is influenced by the fact that they are also carrying a gun, is a matter of individual perception. While it is within the discretion of the board to “remove” a disruptive individual from a meeting, anyone present at the meeting can decide on their own to involve the police. Moreover, while the police will generally uphold an individual’s right to openly carry a firearm, they will also normally err on the side of caution when a person with a gun is also being accused of acting in a threatening or confrontational manner.

Finally, any individual who appears to “brandishing” their weapon or otherwise presenting it in a manner which appears to be for the purpose of threatening or intimidating another individual is breaking the law and the police should be called immediately. Obviously, simply carrying a weapon in a hip holster or by some other visible means is not, in-and-of-itself, “brandishing.” However, any suggestion or gesture by the individual carrying the weapon that they may be inclined to draw it, particularly in a situation which would not otherwise justify such (i.e. an individual’s life is in danger, a crime is being committed, etc.) should be met with an immediate instruction that they leave the meeting. If they refuse, the police should be called.

## **SO WHAT DO WE DO?**

The first time an unknown individual enters school grounds with an open weapon, school officials are certainly within their rights to immediately call the police as, at that point, neither the intent of the individual nor their legal right to possess and carry a firearm is known. Obviously, personally confronting such an individual has its own inherent risks and administrators must evaluate the situation carefully. This is particularly true in circumstances where the individual does not approach school administrators preemptively regarding the weapon and does not attempt to explain their purpose for having the weapon or produce proof that they possess a valid CPL.

However, once this particular individual is known to both the administration and the local police, and it has been established that they have a legitimate purpose to be on the grounds, it will become increasingly more difficult to justify having the police become involved. While the “intent” of a person can never be “known” by others, police agencies will generally lose interest in taking part in an ongoing dispute between a school district and a CPL licensee who is acting within their rights; especially if, in prior interactions, the individual did not appear to be a threat (beyond the fact that they are carrying a firearm). Indeed, some law enforcement agencies have threatened to begin charging districts for responding to repeat calls concerning the same individual.

Despite all of this, however, there remain some options available to school districts when it comes to controlling guns on school property:

#### SPEAK TO THE INDIVIDUAL

Attempting to approach an individual who is openly carrying a firearm on school property and explaining the districts concerns is always an option; but understand that many people who have already made the decision to openly carry a gun into a school are doing so with a predetermined agenda. Generally, their agenda does not include “compromising” what they believe to be a legal right. Never-the-less, it never hurts to develop a rapport with the individual (especially if they are a parent in the district) and let them know that their decision to openly carry a gun makes teachers, parents and children nervous which can have a “ripple effect” throughout the community.

#### ENFORCE LOITERING RULES

Individuals who appear to be “loitering” can always be asked to leave the premises and, if they refuse, the police should be called. Unknown individuals that appear to be loitering and are also armed, generally warrant an immediate call to the police and should be approached, if at all, cautiously. What constitutes “loitering” is obviously open for debate, and good judgment should be used.

A person who arrives to pick-up their child ten minutes prior to the end of the school day probably wouldn't be considered loitering during those ten minutes, while someone who shows up an hour early, probably would be. Loitering policies should be enforced evenly and sensibly, without an intent to target or antagonize any particular group.

#### ENFORCE SPORTS ARENA BAN

One other option that schools may consider is to ban weapons from sporting events. At present, the law is unclear with respect to what constitutes “a sports arena.” As such, a justifiable argument can be made that schools are within their rights to ban the possession of all firearms at any sporting event played at any arena type facility (i.e. a gymnasium, an indoor track facility or an outdoor field with bleachers) under the “gun free zone” rule outlined in MCL 750.234d. It is recommended that the school post the prohibition at the entrances to the venue as well as cite the law (see below). Likewise, it would be wise to contact the local law enforcement agency beforehand and explain your district's stance on this law as well as your intent to enforce the “sports arena” provision, so as to reduce the possibility of confusion if/when the time comes to involve them.

*For more information on any of these cases contact Joel Gerring, MASB Assistant Legal Counsel at 517.327.5922 or [jgerring@masb.org](mailto:jgerring@masb.org).*

## **ATTENTION:**

### **ALL FIREARMS ARE BANNED IN THIS SPORTS ARENA.**

*Pursuant to Michigan Law it is illegal for individuals, including those who possess a concealed pistol license (CPL), to possess a firearm on the premises of a sports arena.*

MCL 750.234d Possession of firearm on certain premises prohibited; applicability; violation as misdemeanor; penalty.

(1) Except as provided in subsection (2), **a person shall not possess a firearm on the premises of any of the following:**

(a) A depository financial institution or a subsidiary or affiliate of a depository financial institution.

(b) A church or other house of religious worship.

(c) A court.

(d) A theatre.

**(e) A sports arena.**

(f) A day care center.

(g) A hospital.

(h) An establishment licensed under the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws.

(2) This section does not apply to any of the following:

(a) A person who owns, or is employed by or contracted by, an entity described in subsection (1) if the possession of that firearm is to provide security services for that entity.

(b) A peace officer.

(c) A person licensed by this state or another state to carry a concealed weapon.

(d) A person who possesses a firearm on the premises of an entity described in subsection (1) if that possession is with the permission of the owner or an agent of the owner of that entity.

**(3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.**