

Firearms: Open Carry is Legal in Michigan



Linda Davis Friedland

Earlier this year Nicholas Looman walked into Aberdeen Elementary School in Grand Rapids, Michigan to vote while wearing a holstered pistol on his hip. The school officials contacted the police, and Mr. Looman was arrested for bringing a firearm into a school. Later, William Forsythe, the Kent County Prosecutor, issued a

statement that Mr. Looman had done nothing illegal because he possessed a valid Concealed Pistol License (CPL), and his pistol had not been concealed.

While it is illegal to carry a concealed firearm into a school under MCL 28.425o, it is perfectly legal to carry this same firearm into a school openly, in full view of the public.

MCL 28.425o provides the following list of “pistol free areas” for those who possess a valid CPL:

- A school or school property.
- A public or private child care center.
- A sports arena or stadium.
- A bar or tavern licensed under the Michigan liquor control code.
- Any property or facility owned or operated by a church, synagogue, mosque, temple or other place of worship.
- An entertainment facility with a seating capacity of 2,500 or more.
- A hospital.
- A dormitory or classroom of a community college, college, or university.

Many people do not realize, however, that the above restrictions apply only to individuals who carry their firearms concealed. They do not apply to people who carry their firearms openly, such as in a holster on their hips.

The Michigan State Police have provided some guidance on their website, by listing the “pistol free zones,” and then adding that a pistol is subject to seizure in these areas only if it is being carried concealed. The website also states that firearms are prohibited in courthouses, per Supreme Court Administrative Order.

At first, it may seem nonsensical that firearms are *permitted* to be carried *openly*, in areas where they are *prohibited* from being carried *concealed*. To better understand Michigan’s open carry laws, it is best to first understand Michigan’s history.

Open carry has been legal in Michigan since it became a state. Article I, Section 6 of the *Michigan Constitution of 1963* states:

“Every person has a right to keep and bear arms for the defense of himself and the state.”

Two years before Michigan became a state in 1837, this same language appeared in Article I, Section 13 of the *Constitution of Michigan of 1835*. Then, during the early part of the 20th Century, Michigan banned the carrying of concealed weapons. The reasoning for this was best explained by the Michigan Court of Appeals in 1975, which stated:

continued on page 2

Firearms: Open Carry is Legal in Michigan (cont.)

“The purpose of all concealment statutes is clear. At the time they were enacted, the open carrying of weapons upon the person was not prohibited. The purpose of the concealed weapons statutes was to prevent men in sudden quarrel or in the commission of crime from drawing concealed weapons and using them without prior notice to their victims that they were armed. The person assailed or attacked would behave one way if he knew his assailant was armed and perhaps another way if he could safely presume that he was unarmed.”

Historically, only *unseen* firearms were viewed as a problem in Michigan, not firearms in general. In addition to the CPL statute, the Michigan Penal Code, MCL 750. 234d, provides: except as provided in Subsection 2, a person shall not possess a firearm on the premises of any of the following:

- A depository financial institution or a subsidiary or affiliate of a depository financial institution.
- A church or other house of religious worship.
- A court.
- A theatre.
- A sports arena.
- A day care center.
- A hospital.
- An establishment licensed under the Michigan liquor control act.

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

- 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.
- A peace officer.
- **A person licensed by this state or another state to carry a concealed weapon.**
- 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.

Under MCL 750.234d(2)(c), an individual with a valid CPL may carry his firearm into a theater, a bank, a day care center or even a sports arena, so long as his firearm is not concealed. This has been the law in Michigan since 1991. The change leading up to this relatively new open carry controversy, however, was Michigan’s conversion from a “may issue state” to a “shall issue state” in 2001. With this change, county gun boards no longer had the discretion to deny CPLs to qualified applicants. Now CPLs, once reserved for private investigators and individuals who could prove that they

needed a concealed pistol for protection, are being obtained by more and more people. The result has been a lot of confusion on the part of law enforcement and those seeking to prevent the carrying of firearms on public property.

The Daily Tribune reported on August 4, 2012 that open carry advocate, Jeffrey Haman settled his lawsuit against the City of Warren. Mr. Haman had been stopped by police and ordered to the ground because he had been carrying his handgun openly in a holster on his hip. Mr. Haman sued the City for \$100,000, but settled instead for \$5,000 and the City’s agreement to train its police officers about the legality of open carry in Michigan.

This case should serve as a warning to those who intend to use police stops as a means by which to prevent firearms from being carried around in a public area. Mr. Haman had filed his lawsuit for the purpose of educating police departments and the public about open carry in Michigan. The next plaintiff might be motivated by money. Organizations, such as the Michigan Coalition of Responsible Gun Owners, are spreading the word that arrests made under MCL 750.234d(1), may be successfully challenged in court under MCL 750.234d(2)(c).

The Michigan Court of Appeals has issued an unpublished decision regarding open carry, *People of the State of Michigan v. Roger Allen Watkins*, which was decided on June 5, 2012.

Mr. Watkins was arrested for openly carrying his pistol in a shoulder harness at the Home and Garden Show on Michigan State University’s campus. Section 18.01 of Michigan State University’s Ordinances prohibits the possession of a firearm anywhere on campus, except as provided by state law. The Circuit Court overturned Mr. Watkins’ conviction, and the Court of Appeals affirmed. While unpublished, this case is significant, because it demonstrates that institutions and police departments are starting to find themselves on the losing end of these open carry challenges.

It is possible that as more citizens start seeing these open carry proponents walking around on public streets, campuses, schools and such with their pistols openly exposed, the more these citizens may start demanding legislative action. Until then, however, open carry is legal in the State of Michigan.

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Linda Davis Friedland is an attorney in our Livonia office where she concentrate her practice on Commercial Litigation, Employment and Labor Law, Corporate and Business Law, Estate Planning, Utilities Law and Municipal Law. She can be reached at (734) 261-2400 or lfriedland@cmda-law.com.

COMMUNITY COLLEGE CORNER



Patrick R. Sturdy

Michigan's Child Protection Law requires certain individuals, called mandated reporters, to report child abuse and neglect. Mandated reporters are professionals who, in the ordinary course of their work and because they have regular contact with children, are required to report when abuse has been observed or suspected or when there has been evidence of neglect.

Examples of mandated reporters include nurses, physicians, licensed bachelor's/master's social workers, dentists, school administrators, school counselors, teachers and law enforcement officers. For a complete list of mandated reporters, please visit our website at www.cmda-law.com.

With the increase in minors on college campuses through direct credit/dual enrollment programs, colleges need to take steps to make sure that members of the campus community understand their own individual role and responsibility with respect to satisfying reporting obligations.

The law includes procedures that must be followed for

reporting, investigating and responding to child abuse and neglect. Mandated reporters are required to report suspected child abuse and neglect directly to the Department of Human Services by making an immediate verbal report, followed by a written report within 72 hours. There are civil and criminal penalties should a mandated reporter fail to make a report.

Mandated reporters must also notify the head of their organization and provide them with a written copy of the report. Mandated reporters cannot be dismissed or otherwise penalized for making a report or for cooperating with an investigation.

Strict state and federal confidentiality laws govern child protective services investigations. The identity of a reporting person is confidential under the law, but is subject to disclosure only with the reporter's consent, by the judicial process or by those individuals designated in the Child Protection Law.

If you have any questions about what you have read or would like additional information, Mr. Sturdy can be reached at (734) 261-2400 or psturdy@cmda-law.com.

Experienced Attorney Joins Firm's Traverse City Office

We are pleased to announce that Lisa Vogler has joined the Firm as an attorney in our Traverse City office. She concentrates her practice on municipal law, insurance defense, commercial and personal injury litigation.

Ms. Vogler began her legal career at a small Macomb County firm that specialized in insurance defense litigation. While there, her passion for litigation and protecting the rights of her clients was fostered. Additionally, as an entrepreneur and general counsel for a family business, she has extensive background and experience in all issues related to business, including employment law, risk management, contract negotiation and business taxation. Today, Ms. Vogler hopes

to put all of her experience, enthusiasm and love for the law to work for the Firm's clients.

She received a Bachelor of Art's degree, with high distinction, from the University of Michigan and a Juris Doctor degree, *magna cum laude*, from Detroit College of Law.

Ms. Vogler has two daughters, Annabelle and Emma. She is an avid runner and snow skier and enjoys "all things outdoors." While inside, she likes cooking and entertaining with friends and family.

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