

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30212
LANSING, MICHIGAN 48909

February 1, 2018

The Honorable Lee Chatfield
State Representative
The Capitol
Lansing, MI 48933

Dear Representative Chatfield:

Attorney General Bill Schuette has asked me to respond to your November 28, 2017 letter requesting an opinion regarding the status of current Michigan law on open carry of firearms and concealed carry of firearms. Specifically, you ask “where can a person open carry and where can a person conceal carry a firearm.”

Before answering your question, it is important to note that Michigan’s firearms laws are numerous and complex. Therefore, it is not possible to address all conceivable scenarios in the context of this letter. And because there are certain variables that arise when the person’s current or former occupation is related to law enforcement, the judiciary, the military, or similar professions, this letter addresses your questions from the perspective of an ordinary Michigan resident, i.e., one who cannot claim any occupational exemptions under law.

A. Current Michigan Law for Open Carry of Firearms.

The Firearms Act (Act), 1927 PA 372, as amended, MCL 28.421 *et seq.*, regulates the possession and carrying of certain firearms¹ by Michigan residents. The Act provides for a general licensing requirement for people who wish to purchase, carry, possess, or transport regulated firearms, see MCL 28.422, and a specific licensing requirement for those who want to carry a concealed pistol, MCL 28.425b.

¹ The Act regulates the possession and carrying of pistols. A “pistol” is defined as “a loaded or unloaded firearm that is 26 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals it as a firearm.” MCL 28.421(1)(i). As falling within the definition of a pistol, a short-barreled shotgun or short-barreled rifle that is 26 inches or less in length is subject to licensing under section 2, MCL 28.422, or section 2a, MCL 28.422a, whichever is applicable. MCL 750.224b(4).

More than 15 years ago, this office clarified that the prohibitions on carrying a concealed pistol without a proper license did not apply to pistols carried openly and in plain view. See OAG, 2001-2002, No. 7113, pp 103, 104 (June 28, 2002) (“A holstered pistol carried openly and in plain view is not ‘concealed’ and therefore does not violate the prohibition contained in that section.”); OAG, 1951-1952, No. 1388, p 228 (April 18, 1951); OAG, 1945-1946, No. O-3158, p 237 (February 1945); Letter Opinion to State Representative Jack Horton, October 26, 1995; Cf. *People v Kincade*, 61 Mich App 498, 502–505 (1975); and *People v Jones*, 12 Mich App 293, 296 (1968). Accordingly, a person may openly carry a firearm, assuming the person is licensed or may otherwise possess or carry a firearm as required by MCL 28.422, 28.422a, and 28.432, without violating Michigan’s concealed pistol prohibitions. There are, however, certain restrictions on *where* a firearm may be carried openly, and those restrictions vary depending on whether the person possesses a concealed pistol license.

B. Open carry *without* a concealed pistol license.

The Michigan Penal Code, 1931 PA 328, MCL 750.1 *et seq.*, imposes restrictions on the carrying of a “firearm” in public.² Section 234d(1) of the Penal Code identifies certain premises on which the possession of firearms is prohibited, subject to certain exceptions. See MCL 750.234d(2).

Under section 234d(1), Michigan residents who do not have a concealed pistol license may not open carry a firearm in:

- (a) A depository financial institution or a subsidiary or affiliate of a depository financial institution [e.g., a bank or credit union].
- (b) A church or other house of religious worship.
- (c) A court.³
- (d) A theatre.
- (e) A sports arena.

² The term “firearm” is defined as “any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.” MCL 750.222(e).

³ While this statute only refers to a “court,” by operation of an administrative rule adopted by the Michigan Supreme Court, the protected areas would include “any courtroom, office, or other space used for official court business or by judicial employees unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court’s written policy.” Administrative Order No. 2001-1, 463 Mich cliv.

(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. [MCL 750.234d(1)(a)–(h).]⁴

In addition, section 237a of the Penal Code prohibits the open carry of firearms in a school, on school property, or in a vehicle used by a school. See MCL 750.237a(1), (2), (4), (6)(b),(c), and (e).⁵

Other statutes and regulations restrict where a person may openly carry a firearm. Notably, with respect to vehicles, a person may not generally carry a pistol in a vehicle without a concealed pistol license, see MCL 750.227(2), unless the exceptions listed in MCL 750.231a(1)(a) through (e) apply, and there are limitations on the transporting or possessing of other firearms in vehicles as well. See MCL 750.227d. Also, a person cannot possess, carry, or attempt to possess a weapon, including a firearm, in a “sterile area” of a commercial airport, MCL 259.80f(1)(a), which generally refers to the areas in the airport governed by the Transportation Security Administration (TSA). A person may also not bring a firearm into or onto the premises of any correctional facility. MCL 800.283(3).⁶ Also, a person may not openly carry a firearm in a state-operated casino. Except for certain law enforcement officers or security personnel, Rule 432.1212 of the Michigan Administrative Code provides that “[a]n individual may not carry a firearm or other weapon in a casino[.]” Mich Admin Code, R 432.1212.

With respect to Michigan colleges and universities, a person seeking to openly carry on college or university property should consult the school’s firearms or weapons policy, as policies may vary between schools. As an example, the University of Michigan generally prohibits possessing firearms on all University property. This provision was upheld by the Michigan Court of Appeals as constitutional and not preempted by state law in *Wade v University of Michigan*, 320 Mich App 1 (2017), although an appeal is pending. Accordingly, this university does not currently permit the open carry of firearms on campus property. Local

⁴ The prohibitions in (a) through (h) do not apply, however, if a person obtains permission to possess a firearm on the premises from the owner or an agent of the entity in question. MCL 750.234d(2)(d).

⁵ This prohibition does not apply if a person obtains permission to possess a firearm on school property from “the school’s principal or an agent of the school designated by the school’s principal or the school board.” MCL 750.237a(5)(e).

⁶ With respect to jails, a person cannot bring into a jail “for the use or benefit of a prisoner, any weapon or other item that may be used to injure a prisoner or other person, or used to assist a prisoner in escaping from jail.” MCL 801.262(1)(a).

units of government, however, are preempted by state law from regulating firearm possession, such as restrictions on openly carrying a firearm. MCL 123.1102. See also *Capital Area District Library v Michigan Open Carry, Inc*, 298 Mich App 220, 240–241 (2012). But the state government is not a local unit of government, and therefore would not be subject to preemption under MCL 123.1102. Thus, there may be state agencies that impose limitations on the ability to possess a firearm in restricted access areas of state buildings. Even local units of government continue to limit possession of firearms in restricted areas of their buildings.

Persons who wish to possess or openly carry a firearm in the course of their employment should check with their employers as well. While an employer cannot prohibit an employee from applying for and receiving a concealed pistol license or from carrying a concealed pistol, an employer can prohibit an “employee from carrying a concealed pistol in the course of his or her employment with that employer.” MCL 28.425n(2)(a)–(b). Additionally, many employers have policies prohibiting the carrying of firearms, concealed or otherwise, on work premises or during work hours.

Finally, in addition to these restrictions, there are federal restrictions for federal properties,⁷ Natural Resources and Environmental Protection Act (NREPA) restrictions regarding the discharge or carrying of a firearm, see, e.g., MCL 324.40111, 324.41901, 324.43510, 324.43511, 324.43513, 324.43558,⁸ and trespass laws for private properties, see, e.g., MCL 750.552, that may also apply depending upon the particular circumstances. It is worth noting that the authority of private property owners to limit the possession or open carrying of a firearm is significant as it encompasses the vast majority of property within the state. A private property owner includes not just private residents and clubs, but privately owned businesses that invite in the public to provide goods or services.

C. Open carry *with* a concealed pistol license.

Like a Michigan resident without a concealed pistol license, a Michigan concealed pistol license holder may openly carry anywhere in this State unless otherwise prohibited.

Notably, a Michigan concealed pistol license holder is not subject to the Penal Code’s prohibitions in MCL 750.234d or MCL 750.237a, on the carrying of firearms in the locations discussed above in Part B. This is because sections 234d and 237a

⁷ Federal regulations may be found on the Bureau of Alcohol, Tobacco, Firearms and Explosives’ website at <https://www.atf.gov/rules-and-regulations/laws-alcohol-tobacco-firearms-and-explosives>. (accessed January 3, 2018).

⁸ Hunting regulations may be found on the Department of Natural Resources website at http://www.michigan.gov/dnr/0,4570,7-153-10366_37141_14724---,00.html. (accessed January 3, 2018).

of the Penal Code exempt from the prohibitions “[a] person licensed by this state or another state to carry a concealed weapon.” MCL 750.234d(2)(c) and 750.237a(5)(c). As a result, a Michigan concealed pistol license holder may openly carry in the locations described in section 234d(1) and 237a(4) of the Penal Code, unless another prohibition applies.

Section 425o of the Firearms Act governs locations where a person cannot carry a concealed weapon even with a license. See MCL 28.425o. While section 425o(1) of that Act identifies various locations where a concealed pistol license holder cannot carry concealed, those prohibitions only apply to the concealed carry of a pistol and provides no limitations on the location for openly carrying a firearm (or a Taser). See OAG No. 7113, at p 104 (“A plain reading of section 5o(1) . . . discloses . . . that its prohibition applies only to the carrying of pistols that are ‘concealed.’”).

Accordingly, barring some other prohibition, a Michigan resident with a concealed pistol license may openly carry a pistol on the premises identified in section 425o(1)(a) through (h) of the Act. Such other prohibitions apply with respect to commercial airports, correctional facilities, casinos, and courts. A Michigan resident with a concealed pistol license may not possess or openly carry a firearm in the sterile area of a commercial airport, MCL 259.80f(1)(a), or into a correctional facility, MCL 800.283(3), or in a casino, Rule 432.1212, or in any courtroom, office, or other space used for official court business or by judicial employees unless permitted by the chief judge, AO 2001-1.

Also, while a Michigan concealed pistol license holder is not prohibited by the Penal Code or the Firearms Act from openly carrying on college or university property, including in “[a] dormitory or classroom,” or in a “stadium or sports arena,” to the extent these premises are located on college or university property, current ordinances or policies may prohibit the carrying of firearms, concealed or otherwise, at these locations. The ability of certain universities to enact such bans was upheld in *Wade v University of Michigan*, but as noted above that decision is subject to a pending appeal. Under these circumstances, a concealed pistol license holder seeking to open carry on college or university property should consult the college’s or university’s firearms or weapons policy. And any limitations that a private university or college might establish would not be affected by this decision.

Similarly, while a Michigan concealed pistol license holder is not prohibited by the Penal Code or the Firearms Act from openly carrying on school property, some local school districts have nevertheless adopted policies banning possession of firearms on school property. In at least two instances these policies have been upheld by the Michigan Court of Appeals based in part on the recognition of the broad powers the Legislature has given school districts to govern themselves and provide for the safety and welfare of pupils, see *Michigan Gun Owners, Inc v Ann*

Arbor Public Schools, 318 Mich App 338 (2016) and *Michigan Open Carry, Inc v Clio Area School District*, 318 Mich App 356 (2016), but those decisions are subject to a pending appeal.⁹ Until this question is fully resolved, a concealed pistol license holder seeking to open carry on school property is subject to the school district's firearms or weapons policy.

Last, and as previously noted, there are federal restrictions on federal properties, NREPA restrictions, as well as state trespass laws that may apply to a concealed pistol license holder openly carrying a firearm depending on the circumstances. And, as noted above, there might be limitations on possession of a firearm in restricted areas of state and local government buildings.

D. Carrying a concealed pistol.

The Firearms Act provides that a person licensed to carry a concealed pistol under the Act may, "subject to section 50 and except as otherwise provided by law," carry a concealed pistol "on or about his or her person anywhere in this state." MCL 28.425c(3)(a). As noted above, section 4250 designates locations where a person licensed to carry concealed cannot carry concealed, unless the person is exempt from these restrictions. See MCL 28.425o(5). Accordingly, barring application of some other prohibition, Michigan residents who have a concealed pistol license may carry concealed anywhere in this State, except in:

(a) A school or school property except that a parent or legal guardian of a student of the school is not precluded from carrying a concealed pistol while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the student from the school. . . .

(b) A public or private child care center or day care center, public or private child caring institution, or public or private child placing agency.

(c) A sports arena or stadium.

(d) A bar or tavern licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303. . . .

(e) Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the

⁹ On December 20, 2017, the Michigan Supreme Court ordered that oral argument be heard on whether to grant an appeal in both of these cases. On the same day, the Court also ordered that the appeal pending in *Wade v University of Michigan*, be held in abeyance pending resolution of the appeals in the Ann Arbor schools and Clio schools cases.

presiding official or officials . . . permit the carrying of concealed pistol on that property or facility.

(f) An entertainment facility with a seating capacity of 2,500 or more individuals

(g) A hospital.

(h) A dormitory or classroom of a community college, college, or university. [MCL 28.425o(1)(a)–(h).]¹⁰

The “parking areas” of these locations, however, are not included within the prohibition on carrying a concealed pistol. MCL 28.425o(4). This does not limit, of course, a private property owner’s authority to create prohibitions based on that owner’s control of its property.

Also, under section 425o a concealed pistol license holder may not carry a firearm in a casino if contrary to existing administrative rules. See MCL 28.425o(3). Rule 432.1212 of the Michigan Administrative Code prohibits a person from carrying a firearm, concealed or otherwise, in a state-operated casino.

And again, a person may not carry a weapon, including a firearm, into a commercial airport, MCL 259.80f(1)(a), or a correctional facility. MCL 800.283(3). In addition, a concealed pistol license holder may not carry a firearm, concealed or otherwise, “in any courtroom, office, or other space used for official court business or by judicial employees unless the chief judge or other person designated by the chief judge has given prior approval consistent with the court’s written policy.” Administrative Order No. 2001-1, 463 Mich cliii.

As above, with respect to colleges and universities, a concealed pistol license holder is subject to the school’s applicable policies regarding whether he or she may carry concealed on school property. Similarly, a concealed pistol license holder is governed by with his or her employer depending on whether the employer permits the carrying of a concealed pistol in the course of his or her employment with that employer. MCL 28.425n(2)(a)–(b).

Last, and as noted previously, there are federal restrictions on federal properties, NREPA restrictions, as well as state trespass laws that may apply to a concealed pistol license holder depending upon the circumstances. And some state agencies and local units of government might impose limitations on possession of a firearm in restricted areas of government buildings.

¹⁰ Unlike the Penal Code, MCL 750.234d, the Firearms Act does not include a provision allowing the concealed carry of firearms on these properties with the permission of the owner or an agent.

E. Additional considerations for open or concealed carrying.

There are other laws that should be taken into consideration with respect to the open or concealed carry of firearms. For example, barring certain exceptions, state law prohibits the following:

The carrying of a firearm with the intent to use it illegally against another person, MCL 750.226(1);

The carrying of a pistol concealed on or about one's person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person without a license to carry the pistol concealed, except in a person's dwelling house, place of business, or on other land possessed by the person, MCL 750.227(2)¹¹;

The possession of a loaded firearm, other than a pistol, in or upon a sailboat or a motor vehicle, aircraft, motorboat, or any other vehicle propelled by mechanical means, MCL 750.227c;

The possession of an unloaded firearm, other than a pistol, in or upon a motor vehicle or any self-propelled vehicle designed for land travel if the firearm is not taken down, enclosed in a case, carried in the trunk of the vehicle, or inaccessible from the interior of the vehicle, MCL 750.227d(1)(i)–(iv);

Intentionally aiming or pointing a firearm at or toward another person, MCL 750.233(1);

Knowingly brandishing a firearm in public, MCL 750.234e(1), MCL 750.222(c);

Possessing a firearm while under the influence of alcohol or a controlled substance, MCL 750.237(1);

Carrying a concealed pistol while under the influence of a controlled substance or alcohol, MCL 28.425k(2).

Again, these are a just a few of the additional statutes that regulate the possession or carrying of firearms. Depending upon the particular facts, there may be other laws that would apply in any given situation.

¹¹ See MCL 750.231a for a list of exceptions to subsection 227(2), MCL 750.227(2).

F. Summary.

In general, Michigan residents who do not have a concealed-pistol license may *open carry* a firearm in the State, except in the following places:

1. Bank, credit union, or similar institution.
2. Church or other house of religious worship.
3. Court or other space used for court business
4. Theatre.
5. Sports arena.
6. Day care center.
7. Hospital.
8. Bar or business licensed to sell liquor.
9. School or on school property or in a school vehicle.
10. Casino.
11. Commercial airport.
12. Correctional facility.
13. College or university, depending on policy.*
14. Place of employment, depending on policy.
15. Federal property, depending on federal law.
16. Private property, depending on policy.

* Decision is subject to appeal.

And in general Michigan residents who have a concealed pistol license may *open carry* a firearm in the State, except in the following places:

1. Court or other space used for court business.
2. Casino.
3. Commercial airport.
4. Correctional facility.
5. School or university, depending on policy.*
6. Place of employment, depending on policy.
7. Federal property, depending on federal law.
8. Private property, depending on policy.

* Decision is subject to appeal.

And, finally, in general Michigan residents who have a concealed pistol license may *carry concealed* a firearm in the State, except in the following places:

1. School or on school property.
2. Day care center.
3. Sports arena or stadium.
4. Bar or tavern licensed to sell liquor.
5. Church or other house of religious worship.
6. Entertainment facility seating 2,500 or more.

7. Hospital.
8. Dormitory or classroom of a college or university; other campus locations, depending on policy.
9. Court or other space used for court business.
10. Casino.
11. Commercial airport.
12. Correctional facility.
13. Place of employment, depending on policy.
14. Federal property, depending on federal law.
15. Private property, depending on policy.

As discussed above, whether a person has a concealed pistol license or not, a person seeking to open carry at his or her place of employment or during the course of his or her employment may be limited by his or her employer. Likewise, a person seeking to open carry at a college or university is subject to the entity's firearms or weapons policy. A person with a concealed pistol license seeking to open carry in or on the property of a K-12 school may be limited by the local school district's firearms or weapons policy. There may also be additional NREPA restrictions that apply, and private property owners may or may not permit firearms on their property. And some state agencies and local units of government might impose limitations on possession of a firearm in restricted areas of government buildings. Also, federal law would need to be consulted with respect to carrying a firearm in federal buildings or on federal property. Finally, with respect to vehicles, a person may not generally carry a pistol in a vehicle without a concealed pistol license, see MCL 750.227(2), unless the exceptions listed in MCL 750.231a(1)(a) through (e) apply, and there are limitations on the transporting or possessing of other firearms in vehicles as well. See MCL 750.227d.

Thank you for bringing this matter to our attention. I hope this information is helpful to you.

Sincerely,



B. Eric Restuccia
Chief Legal Counsel